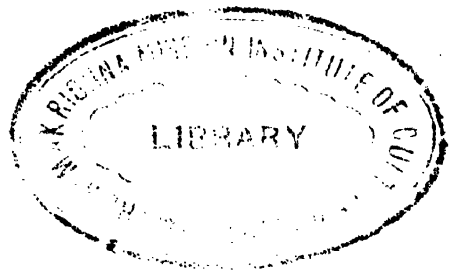
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ESSAYS ON INDIAN AFFAIRS

1892-1895.

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N.B.—These Essays contain authentic information which will prove useful when Administrative Reform is undertaken.

THE FUSION OF EXECUTIVE AND JUDICIAL POWERS IN INDIA.

Reprinted from THE LAW MAGAZINE AND REVIEW, No. CCLXXXIV., *for May*, 1892.

A REFORM, long needed in India, is the complete separation of the Executive from the Judicial functions of the State—in other words, the abolition of the practice of vesting Executive officers with Judicial powers, whereby they are often called to adjudicate in suits in which their own acts or those of their subordinates, done in their Executive capacity, are the very cause of complaint. So long ago as the year 1793, this blot on our Indian administration forcibly struck Lord Cornwallis, then Governor-General, and he accordingly inserted the following passage in the Preamble to Regulation II. of that year, with reference to the practice which had previously obtained, of empowering Revenue officers to preside as Judges in Courts where complaints in Revenue matters were adjudicated :—

"It is obvious that, if the regulations for assessing and collecting the public Revenue are infringed, the Revenue officers themselves must be the aggressors, and that individuals, who have been wronged by them in one capacity, never can hope to obtain redress from them in another. The Revenue officers must be deprived of their Judicial powers. All financial claims of the public, when disputed under the Regulations, must be subjected to the cognizance of Courts of Judicature, superintended by Judges who,

from their official situations and the nature of their trusts, shall not only be wholly uninterested in the result of their decisions, but bound to decide impartially between the public and the proprietors of land, and also between the latter and their tenants. The collectors of Revenue must not only be divested of the power of deciding upon their own acts, but rendered amenable for them to the Courts of Judicature, and collect the public dues subject to a personal prosecution for every exaction exceeding the amount which they are authorised to demand on behalf of the public, and for every deviation from the regulations prescribed for the collection of it."

It was under the *régime* then established that Bengal recovered from the wretched state of destitution in which that province, now so prosperous, had remained plunged ever since it came under British rule in 1757; and the subsequent establishment, in other provinces, of Law Courts to which Revenue officers were made amenable, produced likewise the most beneficial effects. A large division in the Presidency of Bombay may be cited as an example. The condition of the Deccan in the years 1840-50, was thus represented in the Settlement reports :* "The over-estimate of the capabilities of the Deccan, acted upon by our early collectors, drained the country of its agricultural capital, and accounts for the poverty and distress in which the cultivating population has ever since been plunged. Even now, little more than a third of the arable land is under cultivation." In 1864, however, industry, encouraged by less oppressive assessments and better protection of private rights, had developed with such marvellous rapidity, that the Government of Bombay wrote on the 26th July of that year:—"There never was a time during the known history of Western India when

* *Blue Book on the Deccan Riots Commission*, 1878, paragraph 33.

land suitable for the growth of grain was in greater demand. It may be said with almost literal truth that not a thousand acres of land which had been cultivated during the memory of man, are now to be found uncultivated in the Deccan and the Konkan."*

This fair condition of things, however, was not destined to last under the irresponsible form of government imposed on India in 1858. The prosperity of the agricultural classes attracted the attention of the Revenue authorities; and extravagant assessments imposed on land soon stripped the cultivators of the savings they had laid by in prosperous years, and reduced them to the state of destitution in which they were overtaken by the drought of 1877, when millions of persons perished from want of food, and upwards of two million acres of land fell out of cultivation. Vainly had the people protested against the oppressiveness, and even the illegality of the new rates, and when, on appeal to the High Court, a cultivator shewed that the assessment of his field greatly exceeded the limit of one-sixth of the gross produce laid down in the Government regulations, and obtained a decree in his favour, a Bill was introduced in the Legislative Council withdrawing all disputes regarding Revenue and the conduct of Revenue officers from the cognizance of the Civil Courts. This measure, which was passed in 1875 as the *Bombay Revenue Jurisdiction Act*, was as complete a repudiation as can be imagined, not only of the pledge implied in the Preamble to Regulation II. of 1793, but of the plainest principles of justice.

The retrogression involved in this action of the Indian Government, together with other steps taken in the same direction, has had a very deteriorating effect on the character of our Indian administration. The anomalous

* *Blue Book on the Deccan Riots Commission*, 1878, paragraph 66.

Courts of Law, presided over by Executive officers, which are established throughout India, clearly afford undue facilities for the enforcement of arbitrary demands on behalf of the State, and have wrought much injustice. A striking instance of the evil thus produced has recently come to light through a Judgment of the Judicial Committee of the Privy Council, delivered on the 21st November, 1891.*

The owner of the Singampatti estate in the Presidency of Madras was, during his minority, deprived in the following remarkable manner of 48 square miles of mountain land belonging to that estate. The management of the property had been taken over by the Government through its Court of Wards, on the plea of protecting the interests of the owner during his long minority; soon afterwards doubts were suggested on behalf of the Government as to the validity of the Infant's title to the mountain tract in question. Later, a Survey officer, vested with Judicial powers under a Government enactment known as the *Boundary Act*, was directed to adjudicate in the matter, and he decided that the mountain tract was State property. Thereupon the Government kept possession of the land, and appropriated its produce.

The owner of Singampatti, when he had attained his majority in 1880, appealed from the decree of the Survey officer to the Civil Court of Tinnevelly, adducing a grant of the estate made to his ancestor by Lord Clive in 1803, and full evidence as to its extent for a period beyond living memory. The Judge of Tinnevelly, who is a member of the Government Civil Service, partially admitted the owner's claim, but the High Court of Madras (which is presided over by a member of the English Bar) reversed his decree on appeal, and granted the full redress prayed for. Against

* *The Times*, Law Report, Nov. 21, 1891. *The Secretary of State for India in Council* v. *Nallakutti Sivasubramania Tevar* [*sic.* Qy. *Aiyar.*—Ed.]

this decision the Secretary of State for India appealed to the Queen in Council, but the decree of the Madras Court was fully affirmed by the Judicial Committee, and it was shewn at the same time that, so far back as 1843, and again in 1857 and 1858, the Government were aware that the land they claimed was part of the Singampatti estate, and that it had been dealt with as such by their own officers in the years just mentioned.

The public in this country will doubtless be startled at the revelation of such proceedings under the "paternal" administration of the Government of India, which has generally been credited with fair intentions. In this instance, however, the intention itself seems to be the weak point; and, unfortunately, the case is by no means an isolated one. Instances of deliberate injustice have occasionally come to light, betraying a degree of boldness and systematic combination, which could scarcely have been attained without habitual practice; and when the difficulties, dangers, and expense of contending with a Government (virtually despotic) are considered, the conclusion seems inevitable that the cases which have come to the knowledge of the public form but a small fraction of the number of those which have actually occurred. A few of the known instances may perhaps be usefully cited here.

In the *Koth Succession* case a landowner in the Bombay Presidency died, leaving a widow pregnant at the time of his death. The Government, on the plea that the deceased had left no heir, seized his lands and personal property. The unfortunate widow soon afterwards gave birth to a male child, and, as his guardian, claimed her late husband's property; but every obstacle was placed in the way of her getting it. She succeeded in obtaining from the Civil Court of Ahmedabad a certificate of facts which established her right; but the Government ordered the Judge to revoke that certificate. The widow then

appealed to the High Court of Bombay, when every effort was made by the Government to set aside the jurisdiction of that Court; and the spoliation would have been complete, had not the High Court vindicated its right, and firmly performed its duty. In the course of the Judgment, delivered in 1874, the Chief Justice of Bombay said:—

"I have met with no other case in the course of my long experience, which bore plainer marks of falsehood and fabrication. . . . One most extraordinary circumstance is that, after a long contest in the Courts, the Government, through their officers, requested the Judge at Ahmedabad to revoke that certificate, and the Judge was weak enough and ill-advised enough to suspend it. . . . Furthermore, there was a hue and cry throughout the country, raised through the officers of the Government, to destroy the woman's credit, in order to prevent her fighting her own and her son's battles. That was a very extraordinary course for Government officers to pursue. . . . The conduct of the Government necessarily protracted the proceedings. . . . Under all the circumstances judgment must go for the plaintiff with costs."

In the *Oudh* case it was again a woman who was selected for spoliation. The seclusion of females in the upper classes of Oriental society places them at a great disadvantage in protecting their property. After the Mutiny of 1857, a Hindu lady of Oudh, Thâkuráin Sukrâj Kuar, was forcibly dispossessed of her lands on the plea of her disaffection to the British Government, and she was, at the same time, allowed no opportunity to justify herself. She laid her complaint before the Assistant Commissioner of the province, who exercised both Executive and Judicial functions; and a full investigation having proved the charge of disaffection to have been groundless, a decree was given for the restoration of her lands; but the Government stopped the execution of that decree, and ordered the case to be

tried by a superior officer, the Deputy Commissioner of Oudh. This second trial resulted likewise in favour of the lady, when the Government, loth to give up the property, once more suspended the execution of the decree, and ordered that the case should be taken up by the Chief Commissioner. This officer, who held the highest post in the province, simply reversed the judgments of his subordinates, without assigning any ground for his decision. Thus the widow was left bereft of her property. There was no Tribunal in India to which she could appeal from this last decree; but her friends assisted her in laying her case before the Queen in Council, and, after long years of anxiety and privation, the appellant obtained, in 1871, an order for the restitution of her estate of which she had then, for fourteen years, been iniquitously deprived. The following passage in the Judgment of the Judicial Committee will show the sense which the Privy Council entertained of the conduct of the Government in this lamentable case:—

"It would be a scandal to any Legislation if it arbitrarily, and without any assignable reason, swept away such rights; and in this very painful case it is, at all events, agreeable to their Lordships to find that no such scandal attaches to the Laws in force in Oudh, and that the cruel wrong of which this lady has been the victim is due to the misapprehension* of the law by the Chief Commissioner. Their Lordships cannot but express a hope that, by an act of prompt justice and a liberal estimate of what is due to this lady, the Government will relieve her from further litigation. She had two decisions in her favour carefully and correctly adjudged, which, as they were consistent with the plainest principles of justice, it should have been

* For the delicate term "misapprehension" some might be inclined to substitute *disregard*.—J. D.

the effort of an appellate tribunal, unless the law controlled it, to maintain."

A matter for deep regret, in connection with these cases, is that the officers, whose conduct aided in the perpetration of such glaring injustice, were visited with no public signs of displeasure by either the Viceroy or the Secretary of State for India. And when it is remembered that the Government of India is responsible to no authority except Parliament, where India is not represented, it will be seen that the *régime* of 1858-61, by which India is being ruled, has provided no remedy or protection whatever against abuse of the extraordinary powers which it intrusted to the Government of that country. Can any doubt be entertained as to the issue, if this perilous situation be prolonged?

J. DACOSTA.

P.S.—Since this article was written, another case of spoliation has been brought to light in a Judgment of the Judicial Committee of the Privy Council, delivered on the 6th February, 1892.* In this instance, the Government having become possessed of the Bhaunandpur estate in Monghyr, claimed a slice of the neighbouring estate of Ishakpur, and took forcible possession of the land, without submitting their claim to any Judicial decision whatever. The owners of Ishakpur filed, in 1862, a suit for the recovery of their property; but owing to the obstacles which they encountered, it was not until 1870 that a decree for its restoration could be obtained. In 1883 the Government again claimed the same tract, and filed a suit for its

* *Times*, Law Report, Feb. 6, 1892. *The Secretary of State for India in Council* v. *Durbijoy Singh and others.*

possession, without, however, shewing any new ground for their action; previously to 1862 they had acknowledged and dealt with the land in question as belonging to the Ishakpur estate; and the ordinary law of limitation would have debarred their renewed claim after so long a period; but they had taken care to exempt themselves, by legislative enactment, from the operation of that law.

In order to place the respective positions of the contending parties in a clear light, it is necessary to remind English readers that the Courts which have jurisdiction in the first instance in such suits in India, are presided over, not by independent Judges or trained lawyers, but by members of the Indian Civil Service, whose advancement depends in no small measure on the satisfaction which they afford to the Government, and who, on the other hand, may, at any time, be removed to a distant part of the country, if they incur the displeasure of the Authorities. Under such circumstances, their anxiety to avoid causes of displeasure to the Government becomes quite intelligible. Indeed, there seems no other rational way of accounting for the frequency with which wrong decisions are delivered by provincial courts in India, in suits in which the Government have an interest. In the present instance, the Subordinate Judge decreed partly in favour of the Government; but the High Court of Bengal, on appeal, reversed his decree and dismissed the Government suit with costs. This Judgment has now been affirmed by the Judicial Committee of the Privy Council.

J. D.

JUDICIAL INDEPENDENCE IN INDIA.

(*Reprinted from* THE LAW MAGAZINE AND REVIEW, *August*, 1892.)

A MILLION of Englishmen, at home and abroad, have doubtless read, with feelings of satisfaction, the following sentences in a leading article in the *Times* of May 23rd last:—"There is nothing in all our institutions of which we are more justly proud than the absolute independence of the Judicial Bench, and there is none of our traditions which we would more gladly see reproduced and perpetuated in the great communities which it has been our destiny to found in distant lands." At the same time, the following question must have arisen in the minds of many readers, viz.:—"What have we done towards perpetuating that glorious tradition in India, among the largest community that Providence has placed under British rule?"

Judicial independence in India is to be found only in the four Presidency High Courts, which exercise a limited original jurisdiction, and are open to appeals from the Provinces. In the rest of the Indian Empire such independence is rendered simply impossible by the tribunals being presided over by members of the Government Civil Service, who are subject to the immediate control of the Executive. In certain Provinces the Judges are actually Executive officers vested with Judicial powers; and the result of this anomalous system is that appeals from decisions given under official pressure are obstructed by the Executive, and prevented for years from being heard and determined in a

High Court. Authentic illustrations of this state of things will be found in the *Law Magazine and Review*, No. CCLXXXIV., for May last, under the heading of "*The Fusion of Executive and Judicial Powers in India.*"

Under such circumstances it will easily be understood that the right of appeal to a High Court is held in the highest estimation by the people of India, who look to it, not only for an impartial and enlightened decision of their suits, but also for a wholesome control over the proceedings of the subordinate tribunals throughout the country. Unfortunately, such control is seriously impeded by the action of the Executive in the manner just alluded to, and by the numerical disproportion existing between the High Courts and the establishments which they are expected to control. For example, in the Bengal Presidency in 1889-90, the District and inferior Courts determined 491,298 cases, while the High Court disposed of 4,636 appeals and applications, leaving 3,654 cases pending. (*Blue Book* 250 *of* 1891.)

That so unsatisfactory a state of things as has been mentioned above should prevail in a country where we have long prided ourselves on having gained the confidence of the people by our impartial administration of justice, is due to causes which a short retrospect into the history of our Judicial administration in that country may suffice to explain.

In 1726 Mayor's Courts were first established by Royal Letters Patent at Calcutta and Bombay, and the Regulating Act of 1772 constituted the Supreme Court of Bengal for the purpose of affording to British subjects in India the protection which the East India Company's Courts, founded on native law and native procedure, were incapable of providing. Later, Supreme Courts were established in Madras and Bombay, and these, with the Supreme Court at Calcutta, always remained Crown Courts, their Judges being members of the English Bar, nominated to the Bench by the Crown.

On the other hand, the Native system of administration, adopted by the East India Company, was based on the union of all authority—Judicial, Fiscal, and Military—in the same hands; a system which is said to have worked successfully while the rulers and the people were of the same races, spoke the same languages, and obeyed the same code of morality, but which was unsuitable for an alien Government on whom the restraining influences of race and education were entirely wanting. Modifications in the Company's system were introduced from time to time. Under Warren Hastings, an English Collector of Revenue, aided by a Native assistant, dispensed in each District both Civil and Criminal Justice, and appeals lay from these so-called "District Courts" to two *Sudder* Courts, the one in Civil, the other in Criminal cases. In 1774 Provincial Councils or Courts, presided over by three Judges, were created with appellate jurisdiction, and further changes were introduced later; meanwhile a conflict arose between the Civil and the Judicial authorities in Calcutta, and the 21 Geo. III., c. 70, which settled the contentions, constituted a Court of Record, with appeal to the King in Council. In the East India Company's Courts, however, no important departure from the native system occurred until 1793, when Lord Cornwallis effected a separation of the Judicial from the Executive functions of the State, by depriving Executive officers of their Judicial powers, and rendering them amenable to Courts of Judicature, which he then created and placed under the superintendence of Judges wholly uninterested in the result of their decisions.

This was the first attempt at fostering Judicial independence in the Courts of the East India Company; and its success was both rapid and far-reaching. The change, however, was most distasteful to the Executive, whose power it curtailed and regulated; and as the Indian Legislature was then, as it still is, entirely in the hands of

the Executive, new changes were enacted after Lord Cornwallis's retirement, which completely subverted the sound principles of his legislation. The Civil Jurisdiction of the Provincial Courts was abolished, Criminal Jurisdiction was conferred on the Civil District Judges, and Magisterial authority on the Collectors of Revenue. Great confusion and uncertainty arose soon afterwards from the multiplicity of the enactments, and an Indian Law Commission, with the late Lord Macaulay as its President, was appointed under 3 & 4 William IV., c. 85, for recommending reforms in the administration of Justice in India.

The first Report of the Indian Law Commission, with a Penal Code drafted by it, was submitted to the Government of India in 1837. The work was not considered satisfactory, and was recast by Mr. Drinkwater Bethune, who succeeded Mr. Macaulay as Legislative Member of Council in India. This second edition, however, was not more successful than the first, and the projected Code remained shelved until 1853, when a new Council of the Governor-General, of which the Chief Justice of Bengal was an *ex-officio* member, having been constituted by 16 & 17 Vict., c. 95, the work of Judicial reform was resumed and successfully concluded, through the labours of that eminent lawyer, the late Sir Barnes Peacock. The Penal Code, on the revision of which Mr. Peacock bestowed years of the most devoted attention, was read for a third time and passed in 1860, when it was declared in the Council *nem. con.* that "the Code could be safely adopted as the universal law of India." It may be said that our Judicial administration in India had then attained its highest level.*

* It would be a mistake, no doubt, to ascribe the failure alike of Lord Macaulay and of Mr. Bethune in framing a Penal Code, to any want of legal acumen, seeing that they had to perform their task, not as independent

Meanwhile the aggressive policy of annexation pursued by the Government against our Indian allies and feudatories, resulted in the lamentable disasters of 1857-8, and eventually in the transfer of the Government of our great dependency from the East India Company to a member of the British Cabinet. The virtually irresponsible system of administration, which was then adopted for India, struck a heavy blow at Judicial independence. The Secretary of State for India, in whom were centred all the powers that had been exercised by the Court of Directors and the Board of Control, was made responsible only to Parliament, where India has no direct representation; and the "Indian Councils Act, 1861," by removing the Chief Justice from the Governor-General's Council, left the Legislature entirely under the control of the Executive. The 24 & 25 Vict., c. 104, which abolished the Supreme and *Sudder* Courts, and conferred their jurisdiction on the present High Courts, struck another blow at the independence of the Judicial Bench in India, by ruling that, while one third of the Judges of a High Court may be English Barristers, the remaining two-thirds may consist of Civil servants of the Government and of Pleaders of Courts where the law administered and the procedure in use differed materially from those of Crown Courts. It must be admitted, however, with regard to the civilian Judges appointed under that Act, that the healthy atmosphere, which they breathed in their new sphere of action, soon revived that spirit of fairness and independence which is innate in the great majority of Englishmen. Unfortunately, however, some of the number seemed unable to throw off the trammels of

lawyers, but in consonance with the views, and subject to the influence, of the Government of which they were the servants; while Sir Barnes Peacock's independent position as Chief Justice placed him beyond the reach of all such influences.

their previous official training, an evil which was aggravated by the allurement of promotion in the Executive service, which was, at the same time, held out by the Government. An unseemly conflict then ensued between the Executive, who seemed determined upon arbitrarily interfering in the proceedings of the Law Courts, and a number of the High Court Judges, who stood up for the supremacy of the Law.

The Criminal Code and the Code of Criminal Procedure, as revised by Sir Barnes Peacock, proved invaluable instruments in the hands of the High Courts, for redressing wrong decisions on appeal, and for guiding Sessions Judges and Magistrates, who labour under special difficulties in the due discharge of their functions, owing to the following circumstances connected with the Police. In a country where the rulers and Englishmen generally hold no social intercourse with the Natives, the Police have exceptional opportunities, through misrepresentation, threats, and violence, to extort money from the ignorant, the timid, and the unprotected; and a great proportion of this nefarious income is derived from witnesses in Criminal cases. The Police are allowed to arrest all persons as witnesses whom they may believe to be possessed of information regarding the case in hand. Murders and minor crimes, and even accidental deaths, thus furnish particular opportunities for extortion. Among the persons taken up as witnesses, all who have any pecuniary means willingly pay to escape the usual ordeal, which consists in witnesses being, at the discretion of the Police, marched in custody to the nearest Magistrate's Court (which may be ten miles away), and thence to the Court of Sessions, their incarceration often lasting several months. The recalcitrant and the poorest, who remain in the hands of the Police, are then tutored (and tortured when necessary) as to the evidence required of them. The Police generally being the prosecutors, are interested in procuring a conviction; and this they have

little difficulty in accomplishing, so long as their criminal methods of producing evidence are not interfered with.

Those unacquainted with India, to whom the above statement may seem to require confirmation, will find such confirmation in the Administration Reports of the Government itself, no less than sixteen police officers having been found guilty of inflicting torture in the Province of Bengal, as stated in the Administration Report of that Province, published in 1878. When it is considered that a well-grounded fear of revenge has raised almost insuperable difficulties in the way of evidence being produced against the Police, the legitimate inference is, that the cases in which police officers have been convicted of torture, form but an insignificant fraction of those in which they have been guilty of the practice. The following are among the proved instances recorded in the above-mentioned Report. In Midnapore two constables were sentenced to five and two years' imprisonment respectively for crushing a woman under a heavy stone to extort a confession of guilt. In Hooghly two police officers got a year's imprisonment for torturing a woman to obtain evidence against her husband. In Nuddea a woman was so ill-treated that she killed herself, the constable present having been sentenced to imprisonment for a twelvemonth only, as evidence of his having taken an active part in the crime was not produced. In Mymensing a police officer and two constables tortured a man to death, and were sentenced to fourteen years' rigorous imprisonment. A remarkable case is that of a sub-inspector in Midnapore, tried for torture and let off by the Court, but departmentally degraded, whereby it became evident that his departmental superiors believed him to be guilty; a case in which one would think that he ought to have been dismissed from the Service. This is one of the many instances that have come to light of the extraordinary influence which the Police exercise over the heads of

the Department, and over Magistrates and Judicial officers generally.

Sir Barnes Peacock's Codes, which were framed with a knowledge of the practices just mentioned, inaugurated a new era in the administration of Criminal justice in India, with the result that trials began to shew an abnormally small proportion of convictions.

Now, the Indian Government, in the person of the Secretary of State for India, relies on favourable Administration reports for obtaining countenance and support in Parliament and with the public at home; and when the criminal statistics and the judgments of the High Courts exposed the hideous blots which disfigure the administration of Justice in India, the Executive became alarmed, and diligently set themselves to the task of satisfying the requirements of the Government regarding the tenor of the official reports. The blots complained of having come to light through appeals made to the High Courts, it was deemed expedient to prevent such appeals as much as possible. A "Criminal Procedure Amendment Bill" was accordingly introduced in 1870, which provided (in Section 5) that an Appellate Court should have power to enhance a sentence, and (in Section 272) that the Government may appeal from an acquittal, without limitation of time; that is, that a man may, for instance, twenty years after his acquittal, be re-arrested, tried and executed for murder. This was, indeed, holding an uneven balance between the Crown and the subject, seeing that the latter is limited to ninety-nine days for appealing from a conviction. A native Association thereupon represented in a Memorial to the Government that "they were not aware of any peculiarities in the constitution of Indian society which required this exceptional and almost vindictive power in the hands of the Government; that an acquittal was an acquittal, and that the order of the Court ought to receive the respect of the

subject and the Crown alike; that such legislation had the tendency to place the Executive in antagonism with the Judiciary, and to prove subversive of public morality and Judicial independence." Then, with regard to Section 5, the memorialists submitted that "the object of an appeal was to secure the ends of justice, and would be frustrated when the applicant was restrained from seeking the desired redress by a fear of the enhancement of his sentence."

These representations, supported by strong expressions of local public opinion, led to amendments prohibiting the enhancement of punishment on appeal, and limiting to six months the period in which the Government may appeal from an acquittal. The first of these two amendments was subsequently withdrawn, and protests against other objectionable features in the Bill were unheeded; finally, a new Criminal Procedure Code was passed in 1872, with many provisions which can be justified by no acknowledged principle and which all tend to prevent appeals from reaching a High Court. Section 64A empowers the Government to transfer any Criminal case from one Court to another Court of equal or superior jurisdiction; and Section 249 provides that when a witness is produced before a Court of Sessions, the evidence given by him before the committing Magistrate may, in the discretion of the presiding Judge, be treated as evidence in the case. Now, it should be borne in mind that the evidence produced in the Magistrate's Court is given when the witness has been, and still remains, in the custody and power of a notoriously corrupt Police.

The worst feature in the new Code is perhaps its system of summary trials. Under Chapter XVIII., Part V., a Magistrate is not hampered by any form; he may take whatever evidence he thinks fit, and then give his Judgment; he is not bound to record his reasons, and Section 227 provides that, in cases where no appeal lies (*i.e.*, where the

sentence is not more than imprisonment for three months, or 200 rupees fine), the Magistrate need not record the evidence of witnesses, his reasons for passing Judgment, or draw up a formal charge. Now, Magistrates have, not unfrequently, been found to have summarily disposed of cases which did not come under that Chapter: at the same time the right of appeal became nugatory, seeing that no records had been kept.

The Right Hon. Sir Richard Garth, late Chief Justice of Bengal, who zealously strove to raise the administration of Justice in that country from the low moral condition into which it had been allowed to sink, has recorded his opinion on the subject in a small book,* from which I take the liberty of quoting the following sentences, as they succinctly represent the actual state of things in India:—

"When the functions of a Policeman, a Magistrate, and a Judge are all united in the same officer, it is vain to look for justice to the accused. Imagine an active young Magistrate, having heard of some daring robbery, taking counsel in the first place with the police, with a view of discovering the offender. After two or three vain attempts he succeeds, as he firmly believes, in finding the right man; he then, still in concert with the police, suggests inquiries, receives information and hunts up evidence through their agency, for the purpose of bringing home the charge to the suspected person. He next proceeds to inquire, as a Magistrate, whether the evidence which he himself has collected, is sufficient to justify a committal; and having come to the conclusion that it is, he tries the prisoner in his Judicial capacity without the assistance of a jury, and convicts him. The Police, upon whom the Magistrate is obliged to depend very much for his facts and information, are neither honest nor reliable. There is

* *A Few Plain Truths About India.* W. Thacker & Co. 1888.

always the fear that the charge against the prisoner may be the work of some wicked conspiracy. It sometimes happens that the Police themselves are engaged as the chief actors in making these abominable charges. To be tried by a man who is at once the judge and prosecutor is too glaring an injustice; and it is only wonderful that a system so indefensible should have been allowed to prevail thus long under an English Government."

Under the circumstances described in the foregoing pages it would be vain to look for Judicial independence in our Indian Provinces. Nature abhors vacuum less than Despotism hates independence on the Judicial Bench; and despotism of the worst type has been imposed by us on our fellow subjects in India. An Oriental despot is restrained in his rapacity by the fear of rebellion; no such fear can affect the ruler whom we have invested with despotic power, seeing that the whole military and naval forces of the British Empire stand at his back ready to crush any insurrectionary manifestation in India. Oriental despotism is mitigated by the sympathy which a common origin and a common faith create between the ruler and his subjects; no such sympathy can exist between our Secretary of State and the two hundred millions of Indians whom we have placed under his despotic rule. In Oriental Principalities and Kingdoms the fundamental laws of society and the principles on which they are based have descended from time immemorial, and are acknowledged as immutable by the sovereign and the subject alike; the *régime* imposed by us involves, on the contrary, an incessant change of legislation both in principle and in form; a condition of things which fills the popular mind with doubts, suspicions, and deep anxiety.

Lord Cornwallis's Regulations and the Codes of Sir Barnes Peacock, which were based on principles of equity, were received with gratitude and acclamations, and

awoke in the people a feeling of confidence in the intentions of their rulers; but those laws were soon blotted out of the Statute Book to make room for enactments which no principle of equity can defend, and which were obviously dictated by stringent fiscal exigencies. A single illustration may suffice to shew the nature of the enactments alluded to.

A landowner in the Presidency of Bombay, having appealed against the assessment imposed on his fields as exceeding the sum exigible under the regulations of the Government, and having obtained from the High Court a decision in his favour, the Government introduced a Bill, entitled the Bombay Revenue Jurisdiction Bill, removing from the cognizance of the Law Courts throughout that Presidency all matters relating to the land-revenue and the conduct of Revenue officers, and empowering the Revenue officers themselves to adjudicate in all such matters. The member in charge of the Bill urged, in defence of the measure, that "if every man is allowed to question in a Court of law the incidence of the assessment on his field, the number of cases which might arise is likely to be overwhelming." The Bill was passed in 1875 in spite of the protests entered by the people, and landowners have thus been deprived of the means of obtaining redress for illegal exactions of Fiscal officers.

It might appear superfluous to add that a most perilous situation has thus been created, were it not for the heavy calamities which ensued from a similar situation thirty-five years ago, and for the unpreparedness in which the Government and the public were overtaken by the catastrophe on that momentous occasion. The policy of spoliation, euphemised under the name of annexation, was allowed its course unrestrained by protest or remonstrance until we were startled by its results, and horrified by the massacres and outrages committed on Englishmen and Englishwomen, and by the amount of blood and treasure

that had to be expended before British rule could be restored in India. The authors of that policy, unfortunately, escaped punishment; they succeeded in averting the wrath of their countrymen from themselves to those fiends in human shape whom their action had evoked—to the Nana Sahib and others whose worst passions were called into play by the thirst for revenge which our adoption of an unprincipled policy had kindled in India.

JOHN DACOSTA.

Postscript.—The scope left for Judicial independence in India is, we are sorry to find by recent news from India, threatened with further contraction by a measure which the Government has been elaborating for two years, and is about to bring forward for enactment. A Bill (bearing the remarkably vague title of "The Madras City Civil Court Bill") proposes to transfer, from the High Court to the Small Cause Court, jurisdiction over all suits up to a certain limit of pecuniary value, which may arise within the local limits of the High Court's original jurisdiction, except Testamentary, Matrimonial, and Maritime suits; and it empowers the Government, at the same time, to raise the pecuniary limit to any larger amount, by notification in the Official Gazette. This proposition assumes that the Indian Legislature (which is, in fact, the Executive) can lawfully deprive the High Court of a jurisdiction conferred upon it by Letters Patent, granted under an Act of Parliament; and it accordingly places the jurisdiction of that Court at the mercy of the Government.

The Judges of the High Court of Madras have protested against this design of the Government to interfere, indefinitely and whenever it may see fit, with powers and

privileges conferred by Royal Letters Patent; and their Minute, in conclusion, strongly "condemns the proposals to place the continued existence of the original side of the High Court at the discretion of the Executive Government, and to limit the liberties and privileges of suitors in Madras, and to deprive them of the right they possess of suing in the High Court."

The history of the last thirty years does not encourage the hope that the Government will recede from the illegal position which it has taken up in the above matter; at the same time, it should not be forgotten that the remedy for the evil lies in the hands of the High Court itself, and, in a measure, in the support it receives from the Public, who are deeply interested in keeping our Judicature free from the control of the Executive. It may be remembered that, some thirty years ago, an India Viceroy presumed to direct that a certain order issued by the Chief Justice of Bengal should not be executed. Sir Barnes Peacock, the Chief Justice referred to, lost no time in issuing a proclamation closing the Law Courts throughout the Presidency, on the ground that the Government had illegally interfered with the course of Public Justice. The ill-advised step taken by the Viceroy was speedily retraced.

J. D.

*** [It will, we trust, be obvious to our readers that both the present Article and its predecessor from the same pen deal with questions of the gravest importance from the point of view of Constitutional Law, affecting the inhabitants of the United Kingdom no less than their fellow-subjects of the Indian Empire, and it is from this point of view that we have been glad to give them the

prominence which they deserved. The student of Constitutional History can scarcely fail to remember how intimately the question of the Independence of the Judicial Bench was bound up with the whole body of Constitutional questions at issue between the Crown and the Nation during the Stuart Period. The dismissal of Coke, C.J., was directly due to his resolute maintenance of the principle of Judicial Independence, and although the nominal issue raised in the Ship-money case might at first sight have seemed but a question of £. s. d., it involved, in point of fact, the same question as that of the "auricular" taking of the minds of the Judges before the delivery of their Judgment in Court, which Sir Edward Coke so strenuously resisted as absolutely fatal to the Independence of the Judicial Bench. It is not necessary to suppose any design on the part of the Government of India to revive, in the Indian Empire of Her Most Gracious Majesty, Jacobean and Caroline modes of Government, such as might have been suitable enough for it under a Mogul Emperor. It is only necessary to point out what a long and disastrous conflict such courses led to in this country, and what a perpetual protest against those courses has been, thanks to Sir Edward Coke, enshrined among the great Landmarks of our Constitution.—ED.]

"JUDICIAL INDEPENDENCE IN INDIA."

LETTERS TO THE EDITOR

FROM HON. SIR ALEXANDER EDWARD MILLER, Q.C., MEMBER OF THE GOVERNOR-GENERAL'S COUNCIL, AND RIGHT HON. SIR RICHARD GARTH, M.A., Q.C., LATE CHIEF JUSTICE OF BENGAL.

We have received letters on the subject of the two Articles contributed to this *Review* for May and August last, on the inter-related questions of the *Fusion of Executive and Judicial Powers in India*, and *Judicial Independence in India*, from two very high authorities, each most competent to pronounce upon the value of those Articles. We think it only due alike to Sir Alexander Miller and Sir Richard Garth, as well as to Mr. Dacosta himself, to print these letters in our current number. They would afford the best justification, if we felt that any were needed, for having published contributions to the discussion of important questions in Constitutional Law, from the pen of a writer in no way connected with the Legal profession. We ourselves felt no doubt on this point, for Sir Richard Garth exactly expresses our own view that, as regards India at least, it was best for such subjects to be raised for discussion in our pages by a disinterested layman. The interest with which such highly trained legal minds as those of Sir Alexander Miller and Sir Richard Garth both look upon Mr. Dacosta's Articles, is the best possible

testimony to their value as contributions to the oldest English Quarterly Review of Jurisprudence.

On the main point raised by way of criticism by Sir Alexander Miller, we think it only right to point out that the words in the note to Mr. Dacosta's Article on *Judicial Independence in India*, to the accuracy of which Sir Alexander takes exception, are not Mr. Dacosta's words at all, but are an extract from the *ipsissima verba* of the Judges of the High Court of Madras. Whether the learned Judges themselves were right or wrong in their view, we must leave to them to say, and we should be happy to receive any communication with which we may be favoured on that point from any members of the Bench of the High Court, Madras, who may feel their accuracy impugned.

We now leave the letters of our two distinguished correspondents to speak for themselves.—ED.

TO THE EDITOR OF THE *Law Magazine and Review.*

Simla, 25th September, 1892.

SIR,—I have read with much interest Mr. Dacosta's articles in your *Review* on the subject of "Judicial Independence in India," and I agree most cordially with their general scope and tenor; but in his note at the end of the last one he has fallen into an error, which is calculated, if uncorrected, not only to mislead persons who may naturally rely on him for their facts, but also—which is of more consequence—to deprive Mr. Dacosta's other representations of much of their legitimate weight in the minds of those who are better informed in this particular, and who may not unnaturally discredit all his statements, on the principle of "*Ex pede Herculem.*"

The Madras City Civil Court Act expressly avoids any interference with the Jurisdiction of the High Court, and even the clause limiting the plaintiff's right to costs in

actions brought in the High Court which might have been brought in the Civil Court—a clause closely modelled on the provisions of the County Courts Act, 1888—only comes into operation when *in the opinion of the* (High Court) *Judge who tries the case*, it ought to have been brought in the Civil Court.

I take the liberty of appending an extract from the official report of my speech in Council on the occasion: the speech has, of course, no authoritative weight whatever, but it may be, I think, accepted as evidence that no such insidious designs against Judicial Independence as suggested are entertained by the present advisers of the Government of India.

I have the honour to be,

Your obedient servant,

ALEX. EDW. MILLER.

Extract.

"The Hon. Sir Alexander Miller said: 'When this Bill was first introduced it contained a provision applying s. 15 of the Civil Procedure Code to the Court about to be instituted. I confess that it appeared to me—apart from the very doubtful question whether it is or is not within the authority intrusted to this Council to interfere with the original jurisdiction of a chartered High Court—at any rate, a proposition which involved very important and, as it seemed to me, very serious consequences. But my difficulty was entirely removed when my Hon. friend, Sir Philip Hutchins, agreed to assent to a clause which expressly preserves all the jurisdiction of the High Court, and merely establishes along side of it a Court having a more limited jurisdiction, and to which the judges of the High Court may themselves, if they think fit, refer cases which otherwise come within their jurisdiction. Strange

to say, the only body which has expressed any wish that the concurrent jurisdiction of the High Court should be taken away are the judges of the High Court themselves. The majority of the judges of the Madras High Court have expressed a wish that the concurrent jurisdiction should be abolished, and that the City Court should be made the sole Court to have cognizance of cases which come within the jurisdiction given to it.

"'I certainly for one could not, with the views which I hold, have assented to that course; but it is rather singular that the Trades Association and the Chamber of Commerce, who now treat this Bill as an attempt to destroy the independence of the High Court, are more anxious for the retention of the High Court jurisdiction than the judges of the High Court themselves.'"

"'. . . . Even if there had been no question of the right of this Council to interfere with the jurisdiction of the High Court—if the terms of the Act of Parliament had been so clear that no question could possibly arise—I, at any rate, should have thought it very much better to retain the concurrent jurisdiction. . . . .'"

"'Under this bill any party who pleases is at liberty to bring in the High Court any suit which he might have brought if this bill had never been introduced; and it is entirely in the discretion of the Judge of the High Court himself, before whom the case is tried, to say whether it is a case which has properly been brought in the High Court or which ought to have been brought in the City Court; and what they call the "penal" consequences mean nothing more than this, that the plaintiff, if he wishes for the luxury of an expensive Court, when in the opinion of the Judge who tried the case he had an adequate remedy of a less expensive kind, should pay for that luxury himself; while, on the other hand, the defendant has no cause of complaint at having to pay the full costs if the Judge, who

tries the case, thinks that it was a proper one to be brought before the High Court. So far, indeed, from interfering with the independence of the Judges, we are entrusting to them a new and independent discretion. It is not a new thing either, for this is exactly the discretion which late County Courts Acts have given to the Judges of the High Court in England, and I have never seen it suggested that the independence of that Court has been in any way interfered with by modern legislation.' "—From the *Gazette of India*, Pt. VI., August 13th, 1892.

TO THE EDITOR OF THE *Law Magazine and Review.*

Brockham Green, Betchworth, Surrey,
2nd November, 1892.

SIR,—The Indian Public is, indeed, much indebted to Mr. Dacosta and yourself, for the two very able Articles which that gentleman has lately contributed to the *Law Magazine and Review*, upon "The Independence of the Judicial Bench in India."

In England, the independence of the Judges is a fact so generally recognised that we are, perhaps, too apt to treat it as a matter of course, and hardly to appreciate its value. But in India, it is very different. We have there a despotic Government, extremely jealous of all authority which can in any way conflict with or control its own; and although theoretically it professes to concede to the Courts of Law, that right of independent action, to which they are justly entitled; yet, practically, the Government officials do often exercise a powerful and sometimes unjust influence over the proceedings of the Courts, especially those of the inferior magistracy; and, although the High Courts do their best to correct any injustice of that kind, the influences which are at work are so subtile, and the miscarriage of justice so often resolves itself into a question of fact, that the judges find it difficult to interfere. At the same time,

the very circumstance of the High Courts having the power to supervise and control the proceedings of the magistracy, and that those Courts are looked upon by the public, and especially the *native* public, as their best and, indeed, their only bulwark against arbitrary and illegal conduct on the part of Government officials, has had the effect in India (strange as it may appear to us in England), of fomenting an unhappy feeling of jealousy on the part of Government against the High Courts, which has been productive of many mischievous consequences, has greatly diminished the efficiency of the Courts themselves, and has been the means of preventing many wholesome and much-needed reforms, which might and ought to have been effected long ago.

I need hardly say, that this subject is a very large one; and I have not sufficient time now to offer you anything like a worthy Article for insertion in your next publication; but if you will kindly allow me space at some future time, I will endeavour to do justice to the cause, and to enlist the sympathies of your English readers.

Meanwhile, I am extremely glad that the criticisms which have already appeared in your *Review*, have been written by a gentleman, against whose disinterestedness and impartiality I should hope that not a word can be said. Mr. Dacosta is neither a judge, nor even a lawyer. He occupied in his time a prominent position in the mercantile world at Calcutta; and whilst there he took an active part in public affairs, and wrote upon some of the leading topics of the day. Since his return to England he has continued to take a lively interest in Indian matters; and if I may presume to say so, he has (in my humble opinion) only dealt too leniently with the abuses, which he has so ably brought to the notice of the English public.

I am, dear Sir, faithfully yours,

RICHARD GARTH.

OUR INDIAN TRANS-FRONTIER EXPEDITIONS:

THEIR AIM AND THEIR RESULT.

J. DACOSTA

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OUR INDIAN TRANS-FRONTIER EXPEDITIONS:

THEIR AIM AND THEIR RESULT.

By J. Dacosta.

I.

NEWSPAPER articles of a semi-official character, published during the last few months, have created the impression that the recent collision between Russian and Afghan soldiers at Somátash, is likely to involve us in war with our great northern ally. The *Times* of August the 25th contains a leading article in which it is said: "When we had established the present ruler of Afghánistán upon the throne of Kábul, we undertook the obligation of defending him against foreign aggression. That engagement we are bound scrupulously to observe; and should the Russians resolve to encroach upon territories which belong to Afghánistán, it will be our duty to repel them."

Now it is well known that *we neither established the present Amir on the throne of Kábul, nor undertook any unqualified obligation of defending him against foreign aggression.* In support of this negative statement, it may suffice to remind the reader of the following incidents connected with the present Amir's accession to the throne.

In the spring of 1880, when we sent a mission to Abdar Rahman, offering to acknowledge him Amir of Kábul on condition of his renouncing sovereignty over Kandahár and Herát, he simply ignored our condition and intimated that, as the heir of Dost Mahomed, he claimed sovereignty over

the entire kingdom that had been ruled by his grandsire. When later, our offer, somewhat modified, was pressed for his acceptance, he clearly gave us to understand that he neither desired nor needed our sanction to his installation on the throne which was his by right. Lastly, when our conditions were communicated to him in the stern language of an ultimatum, requiring his absolute renunciation of Kandahár and the Kuram valley, our conditions were once more ignored, and we were left in the unenviable position of having dictated terms which we were powerless to enforce.

Meanwhile our Kandahár army was defeated with great loss by Ayub Khán at Máiwand, and we saw no prospect of our being able to relieve the remnant of that force, unless we received immediate assistance from Abdar Rahman. The pick of the troops we then had at Kábul, was required to march to the relief of our besieged garrison in the South, a distance of 316 miles; but the risk of being delayed by hostile clans on the road, made it hopeless for the relieving force to reach Kandahár before the place had fallen. Already the tribes around Kábul were assuming a threatening attitude, and our scouts reported that a Jehád, or religious war for the extermination of the "infidel," was about to be proclaimed. In these difficulties we negotiated with Abdar Rahman, and prevailed on him to use his influence in restraining the tribes who were likely to oppose our progress; and, at the same time, to detain near his person the chiefs of the Ghilzái tribes, through whose territories the remainder of our Kábul army was to return to India. This device of temporarily depriving the Ghilzáis of their leaders, prevented them from carrying out the traditional Afghán policy, of exterminating to the utmost a hostile army on the retreat—a policy which was ruthlessly executed against us after our first invasion of Afghánistán.

The timely aid thus received from the new Amir, enabled us to effect our immediate purpose; but it had to be paid for by a heavy sacrifice of national pride. We had to revoke our imperious ultimatum, to acknowledge Abdar

Rahman's sovereignty over Afghánistán without limitation of territory, to renounce the fine we had imposed on the city of Kábul for its connivance at the murder of our Envoy, to pay ten lakhs of rupees to the new Amir as *an earnest of British friendship*, and to refund the value of the treasure we had seized in Kábul during the invasion. We had moreover to give up a number of our guns, and to leave intact the defensive works with which we had strengthened the position of Kábul.

To bring these harrowing reminiscences to mind, is certainly not a grateful task; but it becomes a duty, when it is sought, through misleading statements, to deprive us of the fruit of dearly bought experience, and to expose us to fresh calamities which, in the light of that experience, might successfully be averted.

As regards the alleged obligation of defending the Amir's territories, no treaty binding us absolutely to perform that service has, as far as it is known, been subscribed by any authorised servant of the British Crown; and, in the absence of such an instrument, we must hold ourselves free to act, in each case, as its circumstances render advisable. In the present instance, at all events, no obligation of the sort can exist, seeing that we have come to no definite understanding with Russia or with the Amir, as to the north-eastern line of the Afghán frontier, and are, therefore, not in a position to contend that such frontier has been violated in the Pamirs.

Under all these circumstances, the scare about a war with Russia arising out of the Somátash incident, must be dismissed as groundless; while the motive for having raised it in the present conjuncture, may not be difficult to surmise.

II.

Another serious danger, however, is also foreshadowed in the newspaper articles referred to above; namely the danger of a third Afghán war, or British invasion of Afghánistán. This danger, looking at existing circum-

stances, is not only real, but seems imminent. A leading article in the *Times* of September the 12th refers in the following terms to the cause of our present dispute with the Amir :—" The turbulent population of the Zhob valley has been pacified by us.—At Chaman we have built a railway station on land which the Amir claims as within his territory. —We have no aggressive intentions towards him ; but he takes a different view of the situation." The significance of these sentences will more fully appear when they are considered in connection with the following events which brought about the present situation.

Numerous expeditions, as it is well known, have been employed during the last sixteen years for the subjugation (or " pacification " as it is officially termed) of the border-tribes of Afghánistán, and the construction of roads through their territories. Among those expeditions, the following were charged specially with the " pacification " of the country between Gomul, a village on our frontier at the foot of the Sulimán mountains, and our railway from Quetta to Chaman ; a tract which extends in a south westerly direction through the Zhob valley to Pishin.

In 1888 an expedition was sent to survey the Gomul pass which opens into the Zhob valley ; but as its mission was frustrated by the opposition of the Makhind tribe, a considerable force was organised the following year, which entered the Zhob country from Baluchistán, accompanied by the late Sir Robert Sandeman as Political officer. The Kidarzáis arrested the progress of that force, and it was only in 1890, that our agent succeeded, by diplomacy and subsidies as well as by military force, in establishing a post at Apozái, and in obtaining promises from the Mashud Waziris, the Shiránis and the Darvesh Khel of Wána, that they would keep the Gomul pass open, in consideration of certain sums of money to be annually paid to them by the British Government. Surveys were then made for a projected railway through the Gomul pass and the Zhob valley on to Pishin, to serve as an alternative line to our Bolán

Railway which has been found unreliable, owing to the autumn floods, by which it is annually destroyed.

The chiefs in the Zhob valley, who have been receiving subsidies from us, are said to have maintained a friendly demeanour up to the present time; but their tribesmen never ceased to manifest their objection to our presence, by night-shooting into the British agent's camp, and by cutting off our sepoys within a few hundred yards of their lines. These hostile manifestations latterly became more active; a circumstance which we ascribed to the presence of an official of the Amir. We threatened, therefore, to send an expedition for subduing the clans, unless the official was removed; and the Amir informed us that, in compliance with our request, he had ordered him to retire, pending the conference we had proposed, and an understanding as to the boundary of our Empire.

Now, this suggestion of the Amir for the delimitation of our frontier, is most inopportune and embarrassing for the British Government, seeing that it has, for many years, been striving to advance our frontier into Afghánistán, and is still struggling for that end. On the other hand, our Government contends that the Amir's kingdom does not include the territories of the border-tribes, and that we are consequently at liberty to conquer and incorporate those territories in our Indian Empire. In support of this view, a new map of Afghánistán has been brought out, in which the green border defining the limits of that country, and the red line marking our frontier (as laid down in all our maps until 1890) have been removed, and nothing has been left to show where our territory ends and Afghánistán begins. Furthermore we have assumed the character of protector, and almost that of Suzerain, over the tribes whom we subsidise, and from among whom we have induced a number of men to engage in our service.* To entertain the Amir's

* Simultaneously with the new map of Afghánistán, a chapter was published on the "North-West Frontier of India," in which the author, the Hon. George Curzon, late Under Secretary for India, significantly remarked:

suggestion for a delimitation of the British frontier, would, therefore, interfere with our scheme and our pretensions; and this will probably account for the blustering language and the threats that were subsequently resorted to. The *Times* of November the 2nd contains a leading article in which it is said:—"We hope that the Amir is wrongfully charged with an attempt at evasion, which, if really made, might compel the Government to modify the benevolent and friendly attitude it is desirous of maintaining towards the Amir and his kingdom.—The Government will not be lightly turned from its settled policy; it possesses the means of bringing considerable pressure to bear upon its ally in a disciplinary way.—The Government can do without the strong and independent Afghánistán it strives to maintain: but whenever it shall cease to struggle for that end, Afghánistán as a kingdom will disappear."

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III.

After a threat so clearly and loudly proclaimed, the British Government is not likely to recede from the position it has assumed. On the other hand it is equally improbable that the Amir would agree to territorial concessions, when his doing so is certain to destroy his power and influence over the tribes; and, as regards the latter, we well know that they will not submit to the rule of the "infidel" without a hard struggle. Under these conditions war seems imminent, and it behoves us to estimate its probable issue. For estimating that issue we have invaluable

"The attitude of the border-tribes has, in recent years, become much more friendly towards England than towards Afghánistán . . . they are gradually being transformed into an irregular frontier guard of the Indian Empire." Then, Mr. Curzon, assuming the border-lands to have actually become British territory, says: "It is the forward move from the old Indus valley line across the Middlebelt, and the relations entered into with its occupants, that have, during the last five years, transformed our unscientific frontier into the scientific frontier which I will now proceed to delineate." In his delineation Mr. Curzon includes Lundi Kotal, Peiwar Kotal, the Gomul Pass and Chaman, but the conduct of the tribesmen shows that they take a different view of the matter.

data for our guidance in the history of the last fifty-five years; as, within that period, we twice invaded Afghánistán in circumstances similar to those of our present situation. On both occasions the war was unprovoked; it had been secretly schemed by the British Cabinet, and its object was simply to acquire control over the government of Afghánistán.

Of the final results of the war commenced in 1838 we have a succinct record in the following passages of the "Greville Memoirs":—

"1842. Sept. 10th.—A few days ago I met Sir Charles Metcalfe, the greatest of Indian authorities. He was decidedly opposed to the expedition originally, and said he could never understand how Auckland could have been induced to undertake it. Nov. 30th.—In the midst of all our military success, the simple truth is that Akbar Khan and the Afghans have gained their object completely. We had placed a puppet king on the throne and held military possession of the country. They resolved to get rid of our king and our troops, and to resume their independence; they massacred all our people, civil and military, and afterwards put the king to death. Our recent expedition was undertaken merely to get back the prisoners who had escaped with their lives from the general slaughter, and, having got them, we have, once for all, abandoned the country, leaving to the Afghans the unmolested possession of the liberty they had acquired, and not attempting to replace upon their necks the yoke they so roughly shook off. There is after all no great cause for rejoicing and triumph in all this. 1843. Jan. 16th.—The circumstances attending the termination of the war in Afghanistan have elicited a deep and general feeling of indignation and disgust. Ellenborough's ridiculous and bombastic proclamations, and the massacres and havoc perpetrated by our armies, are regarded with universal contempt and abhorrence. . . . Our greatest military successes have been attended with nearly as much discredit, as our most deplorable reverses. . . . On the whole it is the most painful chapter in our history for many a long day."

IV.

Now, if we turn to the war commenced in 1878, we find that it not only failed in its avowed object, which was the acquisition of an advanced frontier* (in other words the annexation of a portion of Afghánistán), but that it ended, like the previous war, in disaster and humiliation. At its conclusion, and with the advice of the distinguished officer who brought it to an end, we reverted, in our policy towards Afghánistán, to the lines we had originally followed, ever since the two territories became conterminous. Writing from Kábul on the 29th May, 1880, Sir Frederick Roberts said:

"We have nothing to fear from Afghánistán, and the best thing to do is to leave it as much as possible to itself. Should Russia in future years attempt to conquer Afghánistán or invade India through it, we should have a better chance of attaching the Afgháns to our interests, if we avoid all interference with them in the meantime."

This obviously sound policy, proclaimed under official responsibility by our highest authority on the subject, was nevertheless discarded suddenly in 1885, while public attention was diverted to the troubles in Ireland, and measures were immediately adopted for once more attempting the execution of the "forward frontier" or annexation scheme of 1876. A slight modification, however, was introduced in the plan of campaign; it was considered advisable, before marching our armies into the heart of Afghánistán, to invest the eastern and southern portions of the country. Numerous expeditions were accordingly employed for the subjugation of the border-tribes, and the construction of military roads across their country; but these operations completely failed in their object, and our frontier has not been advanced a single day's march from our Indian boundary.

* At the opening of Parliament in February, 1879, Lord Beaconsfield said: "We are now in possession of the three great highways which connect Afghánistán and India. We have secured the object for which the expedition was undertaken. We have secured that frontier which will, I hope, render our Empire invulnerable."

Disappointing and inexplicable as this result might appear to those who have only taken a distant and partial view of the operations, it is simply the effect of causes which have long been known to exist. Those who looked for a successful issue to our frontier expeditions, founded their hope on the superiority of our weapons and discipline, on the proximity of our base, and on the wealth of our material resources. But experience has conclusively shown that, in a barren and mountainous country like Afghánistán, those advantages are neutralised by the absence of roads, the scarcity of fodder and grain, and the fanaticism of the inhabitants; whereby the movement of artillery and cavalry is seriously impeded, and the transport of ammunition, stores and baggage is rendered slow and uncertain; while the proclamation of a Jehád, or religious war, is certain to gather overwhelming numbers of armed men, ready to lay down their lives in the defence of their faith and their traditional independence. The annals of the late war furnish innumerable instances in support of the above statement, a few of which may be cited here. Mr. Howard Hensman, referring to Sir Frederick Roberts's retreat before the tribes led by Mahomed Ján in Decr. 1879, recorded the following remark on the 27th of the same month:—

'We may seem strong enough now when we have not an enemy within twenty miles; but we seemed equally safe three weeks ago, when we disbelieved in the possibility of 30,000 Afgháns ever collecting together."

Sir Donald Stewart, on his march from Kandahár to Kábul in April 1880, telegraphed as under:

"On the 19th the division under my command encountered an armed gathering.—A body of some three thousand fanatic swordsmen poured down on our troops . . . the fighting lasted an hour, after which the entire body of the enemy spread broadcast over the country. The protection of the baggage prevented pursuit by the cavalry."

Mr. Hensman remarks, in his letter of the 26th of the same month, that the baggage train on that occasion was six miles ong; and he adds, with reference to the fight at Charásiá:—

"*At 9.50 Colonel Johnson heliographed that the enemy was reinforced, and that his troops were debarred from* anything but acting on the defence, as their baggage would have had to be sacrificed, if an attempt had been made to storm the hills."

Then, Major Colquhoun, who was attached to the Kuram Field Force under Sir Frederick Roberts, records the following incidents:

"Novr. 29th 1878.—Owing to the exhaustion of the men and cattle, and *the impossibility of keeping up supplies with the troops*, it was decided not to attack to-day. Decr. 6th.—Only three guns and their ammunition were brought up the hill; the task was a severe trial. As there was no forage on the Kotal, the horses and drivers were sent down the hill again. 12th.—The Major General has decided to return to Kuram. . . . The baggage of the four regiments, even on the reduced scale, made a tolerably long column, and the Commissariat camels added to the length to be protected. 15th.—D. O. 347. Sick and wounded to be transported from Kuram to Kohát under escort of the 5th Punjab Infantry. Feby. 2nd 1879.—A convoy of sick men (including General Cobbe who has sufficiently recovered from his wound) proceeded to India under escort. The detachment was ordered to march *viâ* the Darwaza pass, as there was some chance that the Mangals might otherwise attack the party."

Turning now to the operations in Southern Afghánistán, we find the following entries in the diary of Major Le Messurier, Brigade Major of the Quetta army:

"January 10th 1879.—The prices we have to pay are startling; the forage for a horse costs 2 rupees a day. The Commissariat has only four days' supplies for Europeans and seven for natives; and yet there are only some 8,000 fighting men at Kandahár, out of the 13,000 which form the Quetta army. The mortality among the beasts of burden is very great. The want of camel carriage added to the fact that *we have outstripped our convoys of provision*,

is forcing itself to the notice of all. Jany. 18.—Marched *12 miles; the water all along is strongly impregnated with nitre. 29th.*—Thermometer 25°. Increased mortality among the camels. No more tobacco."

At this time, Sir Donald Stewart, finding it impossible to feed his army, sent back the greater number to India. Meanwhile sickness broke out among the men and the cattle, as recorded in further entries of the same diary, as under:

"Feby. 4th.—The Commissariat are out of wood. 7th.—Black frost last night: increased mortality among the camels continues. 12th—The bread we have been having and the water combined will account for the sickness among the troops. April 6th.—The stench from the dead animals along the line was scarcely bearable. 24th.—Rode back into Kandahár and heard of Colonel Fellowes' death. He was as fine a looking man as any in the force, and most active. June 23rd.—The Colonel is laid up, and Rogers, Hawskin and Oliver are all down with fever. July 14th.—Cholera has appeared, ending fatally in 14 cases. 17th.—Cholera still busy at headquarters and the two squadrons. 18th.—A telegram came in saying that Nicholetts was dead, having been seized with cholera at 1 p.m. and died at 6 p.m. 21st.—Hannel of the 1st Punjab Cavalry died of cholera. 29th.—Captn. Chisholme of the 59th was buried to-day. Augst. 6th.—Major Pawis of the 59th was buried this evening—cholera. Anderson of the 25th N. I. buried to-day. Our doctor in the Sappers died last night, also Corporal Boon R.E. 23rd.—Heard that Stavely had lost four Europeans and two natives out of his battery, that Dr. Blanchard had died at Gatur, and Lieut. Campbell of the Baluchis at Chaman, all of cholera."

These diaries show how powerfully the food and transport difficulties, and the absence of practicable roads, interfered with our military operations in the late war, and how cruelly our officers and men were decimated by sickness and death, owing to bad food, want of shelter and the severity of the climate. They testify, at the same time, to

the imperative necessity under which the numerical strength of a British army in Afghánistán has to be limited by the scarcity of food, and show how its efficiency is further reduced by the detachments that have to be employed in guarding the baggage and ammunition, in escorting the sick and wounded to India, and in foraging for supplies. In any future campaign, the railway to Chaman, if not destroyed by the tribes, might facilitate the despatch of troops and stores from India; but it could not lessen the difficulties mentioned above, seeing that those difficulties arose only after we had penetrated into the interior of Afghánistán, while our railway scarcely goes beyond the border of the country. It should also be remembered that our railroad at Sibi was destroyed by tribesmen in 1880, as soon as our defeat at Maíwand became known.

V.

These considerations preclude any sanguine hope of our being able, in a future campaign, to contend successfully with the difficulties which caused our failure in the past. We might, as we did before, enter the country at the head of a victorious army; but our advance would, most probably, induce the Amir to retire beyond the Hindu Kush, as Shere Alí did in 1878; in which case we should be left to deal with the numberless tribes of the country, each jealous of its rights and interests and ruled by its own chiefs, but all united by a common faith, a strong love of independence and a fanatical hatred of the "infidel." Does experience warrant the slightest hope that we should succeed in concluding with those tribes any treaty which would secure the object of our invasion?—Supposing a treaty were obtained under the pressure of our arms, or purchased with our money; could we reasonably look for its fulfilment?—Have not faithlessness towards the "infidel," greed and treachery been repeatedly and advisedly declared by our officers to be prominent features in the Afghán character?—Have we forgotten how Pádshá Khan, whose friendship and loyalty

we so liberally paid for in the last war, fought against us in December 1879, when our fortunes were on the decline?—How, after being forgiven for that "breach of loyalty," and continuing to receive his subsidy, he once more collected his men and attacked our troops in April and May 1880, when *our situation again became critical?—Have we also forgotten our embarrassing* and undignified position, when our magniloquent proclamation of the 28th October, 1879 (evidently the work of one deplorably ignorant of Afghánistán and its people), calling on the tribal chiefs to come and consult with the British officials on the future government of their country, was treated with the most marked contempt?

After such experience—after sixteen years of unsuccessful warfare and an appalling expenditure of blood and treasure, what can justify the Government in once more plunging the nation into a war of conquest, in which the adverse chances would again preponderate, while even success would impair our present situation? The contiguity of our territory with that of Russia would afford facilities to our powerful rival, by an armed demonstration on our frontier, or by intrigue with our Indian subjects and feudatories, to disturb, at any time, the tranquillity of our Indian Empire.

If the fear of Russia, which has driven our Government to so many unprovoked attacks on the Afgháns, be well founded, and we eventually have to encounter a Russian advance, should we not be placed at very great disadvantage in having to fight a powerful enemy in a difficult country, far from our main resources, and amidst a hostile population thirsting for revenge, and ready to aggravate any reverse which may befall us in the contest?

As regards Chitrál and the surrounding countries, our diplomatic and military operations in those regions since 1886, seem to have been governed by the policy under which all our frontier expeditions of the last sixteen years were undertaken, namely, for bringing the territories which

separate India from Afghánistán under British control, in order to facilitate the long-desired conquest of the latter country. Hitherto those operations have not achieved success, and the recent fall of Afzul-ul-Mulk, whose accession to the throne of Chitrál received our support and countenance, is doubtless regarded by the people of the country and the neighbouring States, in the light of a British defeat. This circumstance realises the danger so clearly indicated in the following passage of Earl Grey's letter published in the *Times* in March 1887, warning us against mixing up ourselves with the politics of the Central Asian States: "I am persuaded that the only wise policy for this country to pursue is to keep absolutely aloof from all the quarrels of the Afghans and our other neighbours, and to avoid all meddling in their affairs, unless, by plundering our subjects or by other acts, they inflict upon us injuries which ought to be promptly punished."

"The British authorities cannot support the ruler of the Afghans for the time being without giving offence to all his competitors; and as it is in the nature of the half-barbarous States of Asia to be never long free from revolutions, their rulers are never secure from falling. The fall of one who has been supported by the British Government, which may take place at any moment, will have the appearance of a reverse to that Government."

12th January, 1893.

Sir Lepel Griffin's article in the *Fortnightly* of this month confirms in so striking a manner some of the most important statements contained in the paper of which the above is a reprint, that I have ventured, with the permission of the Editor of the *Asiatic Quarterly Review*, to append here the following remarks.

Sir L. Griffin says: "I have never seen Abdar Rahman since the 11th August, 1881, when, at the close of long and anxious negotiations, he was received under the walls of Kábul by Sir D. Stewart and myself; and, immediately after the interview, we left to overtake the army which had already commenced its homeward march." Doubtless those negotiations involved much anxiety, since their object was to secure the least derogatory terms possible for our withdrawal from Afghánistán; to obtain the Amir's aid in enabling the force under Sir F. Roberts to reach Kandahár in time to relieve the British garrison besieged in that city, and to arrange for the remainder of our troops returning to India unmolested. All this occurred however in 1880, and it is doubtless through inadvertence that 1881 has been stated in Sir L. Griffin's article. The Amir's attitude he graphically depicts in the following sentences:—"He believes that he holds his throne by divine right.—Instead of his attitude being that of a man under immense obligations to our Government, he has adopted a *de haut en bas* style, which is aggravating to the Foreign Office at Calcutta." Evidently, the Amir took a different view of the situation, and considered that we had, by seeking his assistance for escaping from a difficult position, placed ourselves under obligations to him.

The Afghán character is also forcibly described thus: "The Afghán has a very tenacious memory for injuries, and he never fails to avenge them, should an opportunity occur. The Afgháns are fierce, bloodthirsty, fanatical, and treacherous. Their highest virtue is courage, which they possess in a conspicuous degree."

Our embarrassing situation in the late war, when we called on the tribal chiefs to come and confer with us on the future government of their country, is also characteristically described, thus: "When we were in Afghánistán we found it almost impossible to negotiate with any compact body of tribal chiefs, either in the Kohistán, Kábul, Jallálabád or Ghazni districts.—The Baluchis are as amenable to authority as the Afgháns are the reverse.—Sir R. Sandeman held the Baluchi tribes in the hollow of his hand, by obtaining the confidence of their chiefs.—I doubt whether the English could govern Northern Afghánistán with comfort or credit."

On the other hand, some passages in Sir L. Griffin's article are somewhat enigmatical, while others again seem irreconcilable with historical facts. The writer says, for instance:—"The idea of selecting Abdar Rahman as a ruler of Northern Afghánistán, exclusive of Kandahár and Herát, had been approved by Lord Lytton, and the sagacious policy of the Viceroy in this selection, and the admirable manner in which it was developed by

him, have never received sufficient acknowledgment. The idea was a bold one and it was eminently successful." Now, Abdar Rahman having declined to entertain our proposal that Kandahár and Herát should be excluded from his kingdom, and such exclusion not having taken place, it is difficult to understand the drift of the above passage. Again the writer says: "Confronting Abdar Rahman with his own (inflammatory) letters, I presented him with what was literally an ultimatum, which he was wise enough to accept." But it is well known that the British Ultimatum of 1880, demanding territorial concessions, was not accepted, but was, on the contrary, entirely ignored.

The following, however, are passages which will doubtless be read with very great interest, seeing that they disclose the grounds of our present dispute with Abdar Rahman, and hint at what must follow, if that dispute be not satisfactorily settled:—"Afghánistán is the most important outwork of our Indian Empire, and we cannot afford to allow it to remain closed to us, as at present. We know very well what we want. First in importance may be placed an English Minister at Kábul, with officers as agents at Kandahár and Herát. Secondly, we require the extension of the railway to Kandahár, and telegraphic communication between Kábul, Herát, and British India. . . . It is quite certain that we do not desire again to occupy Afghánistán; it is equally certain that, if we occupy, we shall have to annex."

That the above conditions will not be complied with by the Amir, is likewise quite certain; seeing that if Abdar Rahman accepted them, he would cease to be Amir, and we should once more have to deal with the numberless tribes of Afghánistán. If, therefore, Sir L. Griffin has spoken with authority, as his tone would imply, a third Afghán war may be considered as imminent.

J. D.

A RECENT CRIMINAL PROSECUTION IN BENGAL.

(*Reprinted from* THE LAW MAGAZINE AND REVIEW, *February*, 1893.)

THE *Law Magazine and Review* for 1892 contained articles and letters on the administration of justice in India, which disclose the existence of a most deplorable condition of things in that country.* The practice followed by the Government of vesting Judicial powers in its Executive officers has resulted in complaints against the conduct of such officers being submitted to themselves or to other Executive officers for adjudication, whence difficulties have arisen in the way of obtaining redress for wrongs suffered at their hands, which have proved practically insuperable. A case has just occurred in Bengal, which strikingly illustrates how Government servants possessed of such powers may, with perfect impunity, commit the most flagrant acts of injustice and illegality.

A wealthy landowner, Raja Surya Kanta Acharya, was summoned in May last by the Assistant-Magistrate of Mymensing, to answer charges brought against him by the District Magistrate† under various sections of the Penal Code, amounting in substance to his having, in building his palace, encroached on 18 inches of the public road, and closed a drainage channel. The trial commenced on the 21st June, and while witnesses for the prosecution were being examined, the prosecutor, in his capacity of District Magistrate, directed a number of labourers, accompanied

* See No. CCLXXXIV., for May, *Fusion of Executive and Judicial Powers in India;* No. CCLXXXV., for August, *Judicial Independence in India;* and No. CCLXXXVI., for November, *Letters to the Editor on Judicial Independence in India.*

† He is also the District Collector of Revenue.

by an armed police force, to break down a portion of the wall of the Raja's palace and to excavate a drain in its grounds. In the meantime, the following words passed between the Assistant-Magistrate who was trying the case and Mr. M. Ghose, counsel for the Raja.

Asst. Mag.: "Where is the Raja? I want him to appear. I want to put questions to him."

Counsel: "The Raja's personal attendance has been dispensed with, and we appear for him. We are authorised to answer any question that may be put."

Asst. Mag.: "I want to examine him."

Counsel: "If you insist on his appearance, he will be bound to appear; but you know the ideas and prejudices of the people on this subject."

Asst. Mag.: "If the Raja is above those prejudices, why should he not appear?"

Counsel: "His attendance has been excused by the District Magistrate. Why should he now be forced to appear?"

Asst. Mag.: "I can reverse that order."

Counsel: "Of course you can. I am sure, as a judicial officer, you will not do anything which will harass and annoy and compel him to come, except for a good object."

Asst. Mag.: "I think it a good thing for the Raja to appear. I insist on having the Raja before me to-morrow."

Counsel: "I will advise him to appear, but respectfully protest again, and submit that his attendance is unnecessary."

Asst. Mag.: "He has brought it all on himself."

Counsel: "That is a statement made on an *ex parte* view of the case."

Asst. Mag.: "I wish the Raja to attend and to remain present, and stand in the dock."

Counsel: "Will you insist on the Raja standing in the dock?"

Asst. Mag.: "*Yes, he must stand here like any other man.*"

Counsel: "You have the power, but it is a question of discretion and judgment. I respectfully submit, it would not be a wise exercise of your power to compel him to stand in the dock."

Asst. Mag.: "I have decided to issue a process if he is not produced to-morrow. I shall issue a warrant."

Counsel: "Permit me to remind you that our Indian Courts are accustomed to respect the prejudices of the people of this country in these matters. Pray re-consider the matter."

Asst. Mag.: "He must attend to-morrow."

Accordingly, the next day, when the trial was resumed, the Raja entered and stood in the prisoners' dock, and the Assistant-Magistrate, after staring at him for some time, attended to another case in which a low-class criminal was made to stand in the dock by the side of the Raja, and was sentenced to one year's imprisonment. No question whatever was put to the Raja; and, at the end of the day's proceedings, he was not allowed to leave the Magistrate's Court until he had given a surety of 1,000 rupees and his personal recognisance for a like sum to attend the next day. On returning to his palace, he was served with an order of the District Magistrate not to repeat the public nuisance by filling the drain or building up the wall.

On the 23rd June the Assistant-Magistrate proceeded to examine the Raja; but the Raja's Counsel objected to the examination on the ground that no evidence had been adduced to justify it; and, although the objection was over-ruled, the Raja declined to answer the questions put to him. Later, the Assistant-Magistrate stated that, acting on the advice of the District Magistrate, he dispensed with the personal attendance of the Raja, and cancelled the bail-bond executed the previous day.

On the 25th June a new Pleader appeared for the prosecution, and asked for an adjournment, on the ground of his requiring time to read the papers in the case. The Counsel for the defence protested against the delay as harassing to the Raja; but his objection was over-ruled.

On the 27th, when the trial was resumed, witnesses for the prosecution were recalled and examined, although the Counsel for the defence objected to this renewed examination on the ground that the Pleader for the prosecution had intimated on the 23rd that the prosecution had closed its case. Later on the 27th, the Assistant-Magistrate read out a charge, accusing the Raja of having, by an illegal omission, caused mischief within the meaning of Section 432 of the Penal Code, and also of having infringed District Board Bye-Law No. 2. The Counsel for the Raja asked whether the Court would call on the defence to meet any of the other charges referred to in the summons, or any other charge whatever, to which the Assistant-Magistrate replied:—"I do not call upon you to meet any other charge than those I have mentioned." Thereupon, Mr. Ghose called his witnesses, and the case was concluded at 2 p.m. on that day.

The Raja then filed a written statement setting forth, *inter alia*, that the prosecution had been instituted and carried on without any reasonable cause, and amounted to a malicious prosecution; that there never was any nuisance or encroachment likely to cause a nuisance; that the prosecutor must have been aware of the fact, and that he continued the prosecution in the hope of getting a conviction which might tend to justify his illegal proceedings in the eyes of the Government; that, with regard to a "proceeding" or statement signed by the prosecutor and placed on the record of the case, the assertion made in it that telegrams had been sent by or on behalf of the Raja to the London *Times* and the Viceroy, and that nearly

500 rupees had been spent by the defendant on the 21st June in sending telegrams, was absolutely devoid of foundation and should be expunged from the record.

On the 29th June the Assistant-Magistrate delivered his Judgment, in which he acquitted the Raja of the charge under the Bye-Law aforesaid, but convicted him under Section 432 of the Penal Code, and sentenced him to pay a fine of 500 rupees or undergo twenty days simple imprisonment.

The Raja appealed from this Judgment to the Sessions Court of Mymensing on the following and other grounds :—

That the Assistant-Magistrate had been illegally and improperly influenced in his Judgment by instructions and advice, written as well as verbal, given from time to time by the prosecutor ;

That the Assistant-Magistrate ought not to have permitted the prosecutor to converse with him out of Court or to advise or instruct him in any way regarding the case ;

That the Assistant-Magistrate, in ordering him to attend and stand in the dock, acted in an illegal and unwarrantable manner, and that the sole object of doing so, as a reference to the proceedings would shew, was to insult and annoy him, and with no other object whatever ;

That the Assistant-Magistrate ought not to have placed on the record the "proceeding" or statement drawn up by the prosecutor, containing matters of prejudice against him and his Counsel.

The appeal came for hearing on the 6th August, when the Judge handed to Mr. Ghose, Counsel for the Raja, a letter he had received from the prosecutor on the subject of the appeal. Later, the Judge handed to Mr. Ghose a printed paper which had also been forwarded by the prosecutor ; after looking at that paper, Mr. Ghose said : "I ask your Honour not to read that paper judicially, as it relates to a matter which the High Court has already

disposed of, and with which we have nothing to do in the present appeal."

(The matter alluded to, it may be well to explain, was a petition of the Raja praying the High Court to set aside the District Magistrate's order of the 22nd June forbidding him to rebuild his wall. A rule had been granted calling on the District Magistrate to shew cause why that order should not be quashed, and was made absolute on the returnable date, the 5th August.)

Mr. Ghose expressed surprise at the letter which Mr. Phillips, the prosecutor, had written to the Judge, and said that it contained a variety of statements, the correctness of which he had no hesitation in challenging. Mr. Ghose then proceeded with his appeal, and after shewing that the offence of mischief was not made out, contended that the conviction under Section 432 of the Penal Code must necessarily fall through.

The Judge: "But if the conviction for mischief is not sustained, why should the Raja not be convicted for a public nuisance under Section 290?"

(This question was suggested by a note of the Assistant-Magistrate attached to Mr. Phillips's letter to the Judge, in which the Assistant-Magistrate said: "If I had given my decision under Section 290, I should certainly have convicted.")

Mr. Ghose: "I must express my surprise that Mr. Hallifax, the Assistant-Magistrate, should have so far forgotten himself as to oblige Mr. Phillips with a note such as he wanted, more than a fortnight after the decision of the case. In this note Mr. Hallifax not only says that he intended to convict the Raja of a public nuisance, but ventures to accuse those who have alleged that the Raja was acquitted of that offence, with 'wilful perversion of truth.' I am one of those who made the allegation, and I emphatically repeat that Mr. Hallifax acquitted the Raja

of that offence, in spite of anything which Mr. Hallifax may now choose to say to the contrary to oblige Mr. Phillips. We have nothing to do with Mr. Hallifax's intention expressed more than a fortnight afterwards. The question is what is the legal effect of Mr. Hallifax's action, having regard to what transpired in his Court. . . . . Mr. Hallifax is young and inexperienced, and the responsibility of this sad exhibition on his part must attach to someone else who ought to have known better."

Mr. Ghose concluded by asking whether the Judge wished him to go into the grounds bearing upon the *bona fides* of the prosecution, and the remaining grounds of appeal, one of which raised the very important question whether Mr. Phillips, as District Magistrate, had the power, which he professed to possess, of interfering with the Judicial discretion of a subordinate Magistrate during the pendency of a case.

The Judge: "I think it would be wiser in me not to go into any of those questions. I think I ought to confine my Judgment to the facts and the law bearing upon the conviction itself."

The Government Pleader then addressed the Court for the prosecution; and Mr. Ghose, in the course of his reply, observed that it was an insult to the understanding of the Court to argue, as the Government Pleader and Mr. Phillips had done, that the offence of "mischief," as defined in the Penal Code, included the offence of "public nuisance," as defined in Section 268 of that Code: finally he applied for authenticated copies of Mr. Phillips's letter to the Judge, and of the printed paper he had also forwarded. The Judge granted the application regarding the letter, but said he would have to consult Mr. Phillips regarding the printed paper, and that Mr. Phillips had acted improperly in writing to him while the appeal was pending.

The Judge then said that he would deliver Judgment after reading the decision of the High Court on the rule which had been made absolute on the previous day; whereupon Mr. Ghose observed that the decision of the High Court in that matter had nothing to do with his appeal. Ultimately, on the 25th August, the Sessions Court of Mymensing gave Judgment, setting aside the Assistant-Magistrate's conviction, and ordering the fine, if paid, to be refunded.

Thus terminated this extraordinary prosecution, the proceedings in which were marked throughout by unfairness and illegalities of a most startling character; and the Raja, in the existing system of Criminal administration in India, was left without any practical means of obtaining redress for the great wrong done to him. A groundless Criminal charge had been got up against him; his palace wall was broken down and his grounds were invaded in a manner specially calculated to imply insult and to lower his dignity in the eyes of the people; he was illegally made to attend before the Assistant-Magistrate and stand in the prisoners' dock by the side of a low-class criminal brought up for sentence; he was himself sentenced to Criminal punishment upon an obviously fictitious charge, while the prosecution was unjustifiably protracted by harassing proceedings and adjournments, which subjected him to prolonged mental suffering, and to a heavy expenditure estimated at some 20,000 rupees.

That the object of the prosecution was not the removal of a nuisance, is clearly shewn by the following and other incidents, which are recorded in the proceedings. When the Raja was charged with committing a nuisance by the closing of a drain, he immediately submitted a proposal for removing the alleged nuisance, but his proposal was rejected before it was read, and the prosecution was forthwith entered upon, accompanied by the wanton act of violence already mentioned. This incident, considered in connection

with the indignities *deliberately inflicted* on the Raja in the course of the proceedings,—with the illegal interference of the prosecutor with the discretion of the presiding Magistrate,—with the attempt of the prosecutor to influence the Sessions Judge at the trial of the appeal,—altogether betrays an intensely hostile feeling, for which no adequate cause was apparent.

The Raja (who is the head of an ancient Brahmin family) is said to be popular in society, with Europeans as well as with his own countrymen; and he is held in the highest estimation by the people at large. In August last the Lieutenant-Governor of Bengal, when laying the foundation stone of the Mymensing Water Works, the erection of which is due to the Raja's liberality, said :—"The many acts of utility and charity of Raja Surya Kanta Acharya merit the esteem of the public, and he is reckoned as the leading benefactor of the District." The Chairman of the Municipality had just before referred to some of the Raja's beneficent works, the Shutea Bridge, the Muktagacha Charitable Dispensary, his contributions in aid of the Medical College building, the Northbrook Hall, the Imperial Institute, Lady Dufferin's Fund, and the extension of the railway to Mymensing.

Now it is, to say the least, not creditable to the Government of Bengal that so distinguished a member of the community, for whose protection that Government is directly answerable, should have been wantonly subjected by Government servants to the outrageous treatment related above; and, in this connection, the following circumstance deserves particular attention.

On the 21st June, the Lieut.-Governor received from the Raja a telegram informing him that the Assistant-Magistrate had ordered the Raja to appear before him the next day in a Municipal case, and to stand in the prisoners' dock; and that the motive was "to disgrace him in the eyes of the

people." The Lieut.-Governor had thus the opportunity of preventing the intended indignity, and his not having prevented it, nor subsequently manifested any displeasure at the unwarrantable conduct of his subordinates, must create the impression that their conduct had at least his tacit permission, if not his approval. This is certainly a serious flaw in the record of a high official; at the same time the circumstance just mentioned strongly tends to support it, while the following considerations further confirm the painful impression expressed above.

Among the prominent measures recently initiated by the Government, the following have created widespread dissatisfaction, namely:—

The abolition of Trial by Jury in Bengal for offences against the person;

The appointment of a Government officer to assess municipal rates and taxes in Bengal; and

The imposition on the Municipalities in Bengal of financial burdens hitherto borne by the Imperial treasury.

The first of these measures deprives the people of the protection of a tribunal which had their confidence, and exposes their lives and liberties to Courts presided over by Government servants, untrained in law and in the spirit of impartiality required for the proper administration of Justice.

The second measure takes from the Municipalities their most legitimate function, and converts them into hollow bodies, calculated to create the misleading notion that Indian communities exercise some measure of local self-government.

The third is a financial measure of an anomalous character, inasmuch as it increases local taxation, without the safeguard against abuse which is provided by the Constitutional right of Municipalities to assess local taxation.

It is not intended here to discuss these measures, and the above remarks are submitted only to shew that the

questions involved are of a nature to provoke strong popular opposition. Such opposition has, in fact, already been loudly manifested in India, where the agitation is spreading and growing in intensity. One of the steps adopted by the Government for overcoming the opposition of Municipalities has been to cause Official members of those bodies to be elected for presiding over them.

Now, the Municipality of Mymensing, ever since its foundation in 1886, invariably elected a non-official member as Chairman; but when a vacancy occurred in that office soon after Mr. Phillips's appointment to the District, he had his name proposed at the election by his subordinate, the Deputy Magistrate, who presided on the occasion. Thirteen votes out of fifteen, however, were given against Mr. Phillips, and, in a letter which he afterwards addressed to the Deputy Magistrate on the subject of the election, he referred to the Raja's influence over the Municipal Commissioners as being injurious to public interests.*

This view of the Raja's personal influence seems to have been adopted by Mr. Phillips, even before he had any official connection, and consequently any intimate acquaintance, with the affairs of the District, seeing that, in a Report for 1890-91, the year which preceded his appointment, he inserted remarks in which the following sentences occur:—"The Raja appears to be *facile princeps* in power and influence. I think he is a man of energy and determination and considerable force of character. . . . . It is said that he shews want of sympathy for his tenantry;" then referring to the Municipality of the sub-division of Muktagacha, the Raja's native village, Mr. Phillips goes on

* Soon after this defeat the Government prepared a Bill (to amend the Municipal Act of 1884), authorising the Executive at any time to deprive a Municipality of the power of electing its Chairman, without assigning any reason, or even alleging any necessity for the change. The Bill, revised in Committee, now approaches its final stages.

to say: "*The Raja is Chairman, and, as his influence is* paramount, he may be said to be the Municipality." Further, he remarks with reference to Mymensing: "A single powerful rich man can smash a Municipality with litigation. This deters the Municipality from effecting improvements which they would otherwise effect."

It will be seen from these reports that the Raja had been represented to the Government as a man with whom it would be necessary to reckon in case any measure distasteful to the community had to be carried. Under all these circumstances, and especially in view of the umbrage taken at the Raja's personal influence, it is quite probable that, if the prosecution had been successful (and a conviction would certainly have been secured but for the intervention of the barristers from the High Court), further indignities would have been devised and inflicted on the Raja for effectually lowering his social position and weakening his personal ascendency over his fellow subjects.

At the time when the prosecution of the Raja was planned, the Government were preparing to bring out the three important measures already mentioned; and which, as they had good reason to believe, were certain to provoke strong opposition. There is nothing extraordinary, therefore, in Government servants striving to weaken such opposition by all the means in their power. On the other hand, no circumstance has come to light shewing that any private feeling of enmity had been entertained against the Raja, either by the two Mymensing Magistrates or by the Lieut.-Governor. His persecution, therefore, by the former, and the countenance lent to it by the Lieut.-Governor, seem intelligible only on the ground that the object was to destroy the Raja's influence, and thus to weaken his power of opposing the distasteful measures which the Government were about to launch against the community to which he belonged.

A very remarkable feature in this case is the course pursued by the Sessions Judge, who, while stigmatising as "improper" the prosecutor's attempt to influence him in his Judgment, unhesitatingly yielded to that attempt so far as to call on the appellant, at the prosecutor's request, to answer a charge of nuisance which formed no part of the order appealed against. Then, after alleging that Section 423 of the Criminal Procedure Code gave him power to substitute a conviction for nuisance, as suggested by the prosecutor, he declared his intention of not availing himself of that power, because, he said, among other reasons: "I am of opinion that it is desirable that these proceedings should come to an end here." Why, and for whom this was desirable, the Judge omitted to mention, but the motive must have been strong, since it induced him to decide for the appellant, while his opinion was apparently in favour of the respondent.

This very extraordinary conduct, however, becomes intelligible when it is considered that, had the Assistant-Magistrate's order been affirmed, the case would have gone up on appeal to the High Court, where there is little room to doubt that an exhaustive and authoritative decision would have been given on all the grounds of the appeal, while the Sessions Judge evinced a strong aversion to discuss the following, namely:—

That the prosecution was unjustifiable and unwarrantable from every point of view;

That the Assistant-Magistrate had been illegally and improperly influenced in his Judgment by the instructions and advice of the prosecutor;

That the Assistant-Magistrate ought not to have permitted the prosecutor to converse with him out of Court or to advise or instruct him in any way regarding the case;

That the Assistant-Magistrate in ordering the appellant to attend and stand in the dock, acted in an illegal and

unwarrantable manner, with the object of insulting and annoying him, and with no other object whatever;

That the Assistant-Magistrate ought not to have placed on the record, proceedings drawn up by the prosecutor, containing matters of prejudice against the appellant and his Counsel.

Now, it is an open secret that the Government particularly desire that appeals to the High Court, in cases where the conduct of Government officers is questioned, should, as far as possible, be prevented; and the course followed by the Sessions Judge was well calculated in the present case to give effect to that wish of the Government.

To the public at home, and to the English Legal Profession in particular, the course of action described may appear scarcely credible; but it should be borne in mind that a Sessions Judge in India is not necessarily a lawyer; he is a member of the Covenanted Civil Service, officially vested with Judicial powers, but directly answerable to the Government in the discharge of his duties. The result of this anomalous system of Judicial administration, in the present instance, has been that two Government servants, charged with improper and illegal conduct, have evaded judgment, while a highly respectable member of the community, placed under their care, has suffered grievous wrongs at their hands, and is left without any available means of obtaining redress. And yet, this is the system which the Government of India have been at such pains to elaborate during the last thirty years.

It might well be asked, what motive could the Government have had in devising methods so well calculated to defeat the ends of Justice and to support arbitrary rule? Inquiry into the circumstances leads to the conclusion that the motive was essentially a FINANCIAL MOTIVE. It is not necessary to suppose that the members of the Government

were insensible to the value of purity in the administration of Justice; but, under financial pressure, they appear to have acted pretty much as ordinary mortals have sometimes acted under similar difficulties—they have overlooked moral obligations in their anxiety to provide for financial exigencies; and these exigencies having unfortunately been constantly increasing, ever since the irresponsible form of Government inaugurated in 1858-61 has been in operation, moral considerations seem now to be almost entirely lost sight of. Measures violating the plainest principles of Justice, such as the *Northern India Rent and Revenue Acts* and the *Bombay Revenue Jurisdiction Act*,* are devised for enforcing arbitrary fiscal demands; and even undisguised spoliation is resorted to, as proved in the cases mentioned in the *Law Magazine and Review* for May last.

The Supreme Courts and their successor the High Courts occasionally interfered with the acts of the Executive in India, when these came under their cognizance and were found to be illegal; and the restraint thus exercised over the action of the Government has all along been resented by it as intolerable. So long ago as 1822, the following sentence was indited in a Minute of the Government of Madras:—"It is absolutely necessary for the good government of this country and the *security of the revenue*, that the jurisdiction of the Supreme Court should be more strictly limited, and that it should be completely

* The practical effect of these enactments is shewn in the following fact relating to one of them:—A landowner in the Bombay Presidency having, in an appeal to the High Court, proved that the assessment on his land greatly exceeded the sum demandable under the regulations of the Government, a Bill was introduced in the Legislative Council, removing all matters connected with the land-revenue and the conduct of Revenue officers, from the cognizance of the Law Courts. The member in charge of the Bill urged in its defence that "if every man is allowed to question in a Court of Law the incidence of the assessment on his field, the number of cases which might arise is likely to be overwhelming"

debarred from all cognizance in any shape of the acts of the Government."

The same spirit has since moved the Indian Executive; and their efforts to weaken and destroy the powers of the High Courts have been almost incessant, their latest move in that direction being the *Madras City Civil Court Act*, 1892. When that measure was first brought out in the form of a Bill, the Judges of the High Court of Madras condemned it as "a proposal to place the continued existence of the original side of the High Court at the discretion of the Executive Government." This objection was met by amendments which conferred on the City Court a concurrent jurisdiction with that of the High Court, and vested the latter with the discretion of deciding, when a case is submitted to it for trial, whether it ought not to have been brought in the City Court. This concurrent jurisdiction, however, has been denounced by the High Court Judges as being objectionable; and no necessity has been shewn to exist, for the creation of the new Court; while the enactment, as amended, is still calculated to have the evil effect of diverting suits from the Chartered and independent High Court, to a tribunal created and controlled by the Executive; a course which is encouraged by the lower scale of fees settled for the City Court. Whether the Legislative Council of the Governor-General, in passing the Act in question, has not exceeded its powers, remains to be tested. Meanwhile the measure constitutes a further step taken by the Executive towards the destruction of Judicial independence in British India.

J. DACOSTA.

P.S.—The Indian mail delivered on 31st January brought the published copy of a Resolution of the Bengal Government on the subject of Raja Surya Kanta's memorial

presented in September last. The Lieut.-Governor considers that "the prosecution of the Raja need not have been instituted"; that Mr. Phillips's "indiscretion" was aggravated by the fact that he instituted a Criminal prosecution for a nuisance, "without any complaint having been made to him" on the subject, and "without consulting any medical authority or sanitary expert," as to the existence of the alleged nuisance; that Mr. Phillips's action throughout was "indefensible, and characterised by a regrettable want of discretion, suavity, and common sense."

"At the same time, Sir Charles Elliott is convinced that there is no justification whatever for any imputation on Mr. Phillips's motives in conducting this prosecution. . . . The Lieut.-Governor has no doubt that he acted in what he conceived to be in the public interest, and in good faith, and in perfect integrity of motive and honesty of purpose."

It is difficult to conceive how a Magistrate, who brings an unfounded charge without having taken steps for ascertaining its truth, and who then resorts to illegal devices for securing a conviction, can be found to have acted in the public interest, in good faith, and in perfect integrity of motive. The Lieut.-Governor, at all events, does not explain by what process he arrived at that conclusion, while the published proceedings of the trial disclose no ground for His Honour's allegations regarding the Magistrate's good faith, integrity, and honesty of purpose. In view of these circumstances the Government Resolution can scarcely fail to raise considerable doubt and perplexity in the minds of its readers, and to create the impression that its author is not entirely unconcerned in the general course of action and the motives which it is attempted, in that document, to justify.—J. D.

THE BENGAL TENANCY ACT.

(*Reprinted from* THE LAW MAGAZINE AND REVIEW, *May*, 1893.)

THE Earl of Selborne, referring, on the 28th April last, to the Evicted Tenants' Commission, said that nothing equally unconstitutional had been done since the reign of James II.; that the Commission was appointed to inquire into the private concerns, the exercise of proprietary rights of individual members of the Community, with a view to overruling those property rights, to undoing that which had been done in the due and regular course of the law, according to some scheme which the Commission was to suggest. His Lordship added that the pretext for the Commission was as false and hollow a pretext as had ever been put forward; that the effect was to override all the Acts of Parliament that had been passed on the subject during the last fourteen years; that surely the landlords had rights as well as the tenants, and that the rights of the landlords were recognised and guaranteed by law.

"If any circumstance could be imagined," Lord Selborne went on to say, "which could justify an inquiry into the private rights of property, it would be indispensable that in the first place, it should be a Parliamentary inquiry, with full powers to conduct it according to the rules of evidence, into every circumstance that might tend to bring out the truth. Secondly, it must be a Judicial inquiry, and thirdly it must be an impartial inquiry. If it were Judicially conducted, of course it would be without any foregone conclusion. What was the effect of the whole

business? It was to disturb settlements, to unsettle the minds of the people, and to set one of the worst precedents ever heard of at the hands of an English tribunal."

These very grave charges, which brought at once a declaration that the Government were not going to introduce a Bill for carrying out the recommendations of the Commission, are quoted here for their remarkable appositeness to the Rent Commission in Bengal, on whose recommendations a Bill was framed, which was eventually passed as the Bengal Tenancy Act of 1885.

The effect of that Act is to deprive landowners of the proprietary rights conferred on them by the Permanent Settlement of 1793, by transferring those rights to a class of middlemen created by the Act and empowered by it to rack-rent the cultivating tenants. The object of the measure is to undo what the Permanent Settlement has done towards limiting the fiscal demand on land, without an overt repudiation of that compact. Repudiation had been attempted on several occasions, and the last time that the question came before the Council for India a member expressed his dissent in the following words: "*We have no standing ground in India except brute force, if we forfeit our character for truth.*" It was then decided to gain the coveted financial advantage by a circuitous way, through the complicated machinery of the Bengal Tenancy Act, which, on the pretext of protecting the cultivating tenants, virtually diverts the bulk of the profit yielded by the land into the hands of the above-mentioned class of middlemen who, not being a party to the Permanent Settlement, can claim no limitation of taxation under that compact.

It should here be remembered that, when the Permanent Settlement of 1793 imposed on land the excessive assessment of ten-elevenths of the rental, and made the attachment and sale of an estate the penalty for a single hour's delay in the payment of the revenue, the Government of India,

with the concurrence of the Crown and Parliament of Great Britain, pledged itself in the most solemn terms never to increase its fiscal demand on the land then settled, and to leave the adjudication of disputes to Courts of Law presided over by "Judges who, from their official situations and the nature of their trusts, should be wholly uninterested in the results of their decisions, and bound to decide impartially between the Government and the proprietors of land, and between the latter and their tenants." (See *Reg. II.*) It was further stated: "The Governor-General trusts that the proprietors of land, sensible of the benefits conferred upon them by the public assessment being fixed for ever, will exert themselves in the cultivation of their lands, under the certainty that they will enjoy exclusively the fruit of their good management and industry."

Many estates, in subsequent years, were attached for revenue and sold by the Government to men able to satisfy the revenue demand from other sources, until the land, improved by their capital and industry, yielded the necessary produce. The present return of land in Bengal is, therefore, the fruit of the capital and industry which its proprietors, on the faith of the British Government, expended in improving their property. Not only is that fruit now confiscated under the Tenancy Act, but the estates themselves must, through the impoverishment of the landowners, become liable in greater number than heretofore to attachment and peremptory sale, when the Government may acquire cultivated land considerably below its cost. A judgment of the High Court of Bengal, which was affirmed on appeal to the Privy Council on the 6th of February last year, shews that the Bhowanandpore estate, in the fertile district of Monghyr, was purchased by the Government at a revenue sale for the sum of one rupee.

An essential part of the Act consists of clauses empowering the Executive to make a Cadastral Survey of the country,

and to settle the record of rights, the rents payable by tenants, and all disputes relating to land. The opposition offered to these inquisitorial and dictatorial clauses has hitherto prevented the survey from being carried out, except in an experimental way. In one of the four estates selected for the experiment some 20,000 petitions of objection were laid, and 3,852 suits instituted. Of 447 decisions of the Executive 271 were appealed against, and upwards of a hundred were reversed or altered. The cost of the survey in that estate was 294,328 rupees, or 10½ annas an acre; in another estate the rate was 17 annas.

Of the cost of the projected survey and settlement the Government have decided that the State is to bear one-eighth, and the owners and tenants the other seven-eighths, in equal shares; but the latter would be subjected to additional expenditure, the landowners, to that of entertaining the large establishments of surveyors, land-measurers and their subordinates as customary, and the tenants, in addition to a similar charge on a smaller scale, would have to follow the settlement officers in person, to the neglect of their proper work in the fields. If, moreover, the boundless litigation which the survey is certain to produce, its cost and uncertainties, and the corruption and oppression inseparable under present conditions from such proceedings in India be considered, the dismay and consternation in Bengal at the announcement that the Cadastral Survey is shortly to be undertaken will easily be conceived.

The Rt. Hon. Sir Richard Garth, who was Chief Justice of Bengal when the Tenancy Bill was framed, said, on being consulted on the subject: "Some pains have been expended upon the argument that the Government, in case of necessity, has a right to interfere with vested interests, although created by so solemn a compact as that of the Permanent Settlement. I consider this argument quite superfluous. I take it to be clear that any Government, in

case of a real emergency, has a right, *so far as it is necessary*, to interfere with vested rights, to whomsoever they may belong and howsoever they may have been created. But I take it to be equally clear that, *without some such necessity*, no Government is justified in interfering with the vested rights of any class of its subjects, more especially when those interests have been created and defined, after due consideration, by the State's own legislative enactments. I see no such necessity, and I am bound to say that, among the complaints on behalf of the ryots, which have been published by the Government in connection with this subject, I have been unable to find a single statement that the ryots themselves desired anything of the kind."

"Whilst I yield to no man in the earnest wish to see all necessary and wholesome reforms carried out, I confess I view with horror and dismay the revolutionary provisions of the present Bill. It appears to me absolutely cruel, to sacrifice wantonly and unnecessarily the rights of one section of the community for the supposed benefit of another; to violate laws and usages which have been sanctioned by the Courts and the Legislature for nearly a century; to unrip a solemn settlement of vexed questions, which was made by the Legislature no later than twenty-three years ago [viz., Act X. of 1859]; and all this, not for the purpose of meeting any actual complaints, or rectifying any proved abuses, but merely to place the ryots in a position which certain well-meaning, but, as I think, mistaken members of the Rent Commission, imagine they occupied in the year 1793.

"If it be necessary, as a matter of public policy to deprive the landlords of their rights, let us be honest enough about it and say so; but do not let us attempt to thrust such a blind pretence down the throats of an intelligent people."

"When we consider that, upon the strength of those views, it is now seriously proposed to deprive the land-

owners of this Province of rights and privileges which they have enjoyed for nearly a century; to relegate them to a position far inferior to that which they occupied before the Permanent Settlement; to unsettle and re-establish upon an entirely new footing the relations between landlord and tenant; and to upset a settlement of those relations, which was arrived at in 1859 and confirmed ten years later by another Act of the Government—I think that the Bengal public has at least a right to inquire upon what authority those views are founded and how far they are consistent with the opinions of the many distinguished men who, as Judges, Statesmen, and Legislators, have administered and explained the law during the past ninety years.

"And in answer to this inquiry the public may be surprised to learn that, as to some of the proposed changes, they are based upon no authority at all; as to others, that the views of these gentlemen are founded upon their own construction of the Regulations of 1793 and of the Act of 1859—entirely without regard to the construction which has been put upon those enactments by the Courts of Law and the Legislature; and, as to all, that their views are not only inconsistent with the opinions and the policy of the last three generations, but the laws and usages which have prevailed in Bengal since the time of the Permanent Settlement."

I can only hope that the weighty words of the learned Chief Justice will receive their due consideration at the hands of those who, whether in India or at home, are responsible for the maintenance of "our character for truth;" and in conclusion I would quote the following impressive remarks uttered by the Maharaja of Durbhunga in the speech he delivered at the Legislative Council of India, on the day on which the Bengal Tenancy Bill was enacted:—"I yield to no one in my desire to see the ryots protected from oppression; but it is my deliberate opinion

that this Bill will not accomplish that object. On the contrary, I believe that the constant intervention of revenue officers in all the details of agricultural life will lead to the most widespread confusion, and will be as disastrous to the ryots as to the zemindars themselves. I view with the deepest concern the outlook before us. I dread the passions and animosities which this litigation will kindle and inflame. We are embarking rashly on a sea of change, and many will be shipwrecked on the voyage. Such vast innovations cannot be introduced into the rural economy of the Province without exciting great commotions I can only hope that these anticipations may not be realized; but whatever may be the result, I have, at any rate, the satisfaction of feeling that I have acted as the true friend of my country and of the Government in warning you of the political dangers which, I believe, underlie the proposed legislation."

JOHN DACOSTA.

THE FINANCIAL CAUSES OF THE FRENCH REVOLUTION

AND

THEIR PRESENT BEARING UPON INDIA.

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BARON FERDINAND DE ROTHSCHILD'S two Articles, published under the heading of *The Financial Causes of the French Revolution*, contain passages which so aptly represent the present state of things in India, that they deserve the attention of all who are concerned in the safety and welfare of our great dependency. The similarity in the causes of Financial disorganisation and popular discontent in the two countries will perhaps best appear from extracts of the Articles being placed in juxtaposition with statements on the same subjects relating to India.

The distinguished writer in the *Nineteenth Century* for March, in referring to "the many causes which tended to keep the "Royal Treasury in a condition of chronic distress," says:—

"*Incessant and, as a rule, useless and disastrous wars, the "erection of costly palaces, and a disregard for the most elementary "principles of economy, constituted a perpetual drain on the "resources of the country.*"

The disastrous Afghan wars of 1838 and 1878, the numerous trans-frontier expeditions undertaken since 1876, the construction of railways and roads for introducing troops into Afghanistan, and the sums of money paid to its rulers and tribesmen for lessening their opposition to our advance, have drained the Indian Treasury of considerably more than a hundred millions sterling. The construction of faulty irrigation works which failed to earn the interest on their cost; the purchase of Army and Railway stores on systems opposed to the most elementary principles of

Economy; the erection of palaces and public offices in remote mountain regions, to enable Governors annually to retire from the seats of Government and the centres of population—expenditure under these several heads have imposed excessive burdens on the resources of the country, and contributed to keep the Indian Treasury in a condition of chronic distress.

"*The sense of wrong rankled in the hearts of the people, the "cleavage between them and the governing classes became wider "and deeper; but as tradition and custom still made them "inclined to believe that their hard lot was part of the proper "order of nature, they bore their yoke sullenly but with more "patience than might have been expected.*"

Those who have resided in Indian cities, or among rural populations in India, will be struck with the analogy of feeling entertained by the two peoples, as described in this extract; while outsiders may come to the same conclusion from a perusal of the native and Anglo-Indian press in every Province of the Empire. The cleavage between the people and the governing race is becoming wider and deeper under the unsympathetic system inaugurated in 1858-61, which the natives have nick-named *Naksha-ki-raj*, or "rule by reports," with the intention of showing up the absurdity of ruling a vast Empire from a distant land, through reports of Indian officials, manifestly written under injunctions as to their tenor and tendency.

Tradition and custom have induced the millions in India to bear their yoke with more patience than might have been expected; but increased facilities of communication and the spread of knowledge through the press have awakened a sense of wrong in the hearts of the people, which is fast altering their attitude towards their rulers.

"*The rulers of France did not seem to understand that there is "a limit to the extent of taxation even in the richest country, and "that there must be a certain element of justice in its incidence,*

"*even under the most autocratic rulers, if ultimate bankruptcy*
"*and ruin are to be avoided.*"

Taxation in India has been pushed to the limit where enhanced assessments discourage industry and cease to produce additional revenue; at the same time the depreciation of silver and the ever-increasing expenditure of the Government are being officially urged as reasons justifying increased taxation. The incidence of the taxes is glaringly unequal, the Income Tax falling lightly on the rich and being oppressively felt by the industrial classes; while the Salt Tax, which is inappreciable in the expenditure of the wealthy, stints the poor of an article essential to health, and produces intense suffering among the rural population and the working classes in general.

"*It is true that her bad financial condition did not greatly*
"*injure the credit of France, and her pecuniary needs were*
"*supplied by loans. But however freely one can borrow, the*
"*time must come when the debt has to be repaid; and the bridge*
"*by which difficulties are temporarily surmounted, becomes so*
"*over-weighted by its constantly increasing burdens, that it must*
"*some day collapse into chaos beneath.*"

The credit of the Government of India is now almost as good as that of the United Kingdom, although the liability of that Government towards its creditors is strictly limited, by Act 106 of 1858, to the revenues of India. This limitation, however, seems unheeded under an impression that the British Government would, in case of necessity, assist the Indian Exchequer in fulfilling its obligations. On whatever ground that impression may rest, it should be remembered that the British constituencies are largely composed of working men, and poor men, and that their consent to bear additional taxation must be obtained before the British Government can be in a position to grant relief to the creditors of India. Meanwhile, the Indian debt is steadily increasing, while the revenue is on the decline.

"The evil was aggravated by the exactions of a horde of greedy "members of a tyrannical Executive. As late as 1779 the Abbé "Very, one of the reporters of the Committee of Taxation, wrote "that the Collectors of the taille had no other rule to go upon for "its assessment than their own personal opinion as to the relative "resources of each taxpayer. The Collectors formed their "estimates arbitrarily, and any protest on the part of the taxed, "gave rise to inquisitorial investigations which were often "aggravated by private spite and jealousy."

The Land Tax, over the greater part of India, is periodically revised, and the Revenue Surveyors charged with the work, as well as the Collectors of the tax, are unrestrained in their operations, the Law Courts being debarred from taking cognizance of Revenue matters and the conduct of Revenue officers. The Collectors, moreover, being vested with Judicial and extensive summary powers, are enabled to act arbitrarily in their Executive capacity. The assessments, which were made under such conditions in the Bombay Presidency in 1869-73, were so oppressive (the enhancement often exceeding a hundred per cent.) that serious riots ensued, requiring military force for their suppression, and thousands of cultivators, stripped of their moveable property, were evicted from their fields and homesteads, and perished of want when the combined effects of impoverishment, contracted cultivation, and drought produced the appalling famine of 1876-79, the incidents of which will long be remembered with horror. The calamity and its causes were greater still in the Presidency of Madras.

The presence of the Land Tax Assessor, or the Collector in an Indian district, is invariably marked by the extortions of their numerous underlings who (to use Sir Auckland Colvin's graphic expression) "are scattered broadcast over the vexed villages"; and the same distinguished Revenue officer's well-known *Memorandum* of 1872 testifies to the

pressure that is put by the Government on the assessing officers, "to shew cause why their calculations should not lead to a larger rental," or basis for the Revenue demand.

"*The most harassing and arbitrary tax of all was the Gabelle,* "*and it may well appear inconceivable that, in a populous and* "*civilised country, such an impost could be maintained at all.* ". . . . *Carts and carriages were stopped on the highway* "*and searched by the tax-collectors : no private house was safe from* "*a visit from them night or day, and on the slightest suspicion they* "*used the power of arrest that was vested in them. It has been* "*stated that, during the first few years of the reign of Louis XVI.,* "*these arrests averaged* 3,700 *per annum ; that upwards of* 4,000 "*adults and* 6,500 *children were apprehended for smuggling* "*salt ; and that* 300 *were condemned to the galleys.*"

This description of the *Gabelle* applies almost word for word to the salt duty in India, where the evil is intensified by the poverty of the people, and their inability, through difference of language and race, to make their suffering known to their rulers. The excessive duty induces smuggling and crime on an extensive scale; while the poor along the sea coast are cruelly persecuted for using salt-earth scraped on the seaside, instead of duty-paid salt, which they cannot afford to buy.

The conveyance of salt furnishes constant opportunities for extortion, customs-posts being established along high-ways and navigable rivers, where carts and boats may be indefinitely detained on pretence of their contents and passes requiring strict verification.

The great rivers and the sea in India abound with good fish, whence a plentiful and cheap article of food might be obtained throughout the Empire, were it not that the inquisitorial and vexatious practices which are adopted for the protection of the Revenue, seriously interfere with the salting trade and the conveyance of salted goods. The following observations recorded by the eminent Economist, Jean

Baptiste Say, touching the Gabelle, are equally applicable to the salt duty in India:—"Thus taxation greatly reduced the enjoyment which salt is capable of affording, to say nothing of the mischief resulting from it—the injury to tillage, to the feeding of cattle and the preparation of salted goods, the popular animosity against the collectors of the tax, the consequent increase of crime and conviction, and the consignment to the galleys of numerous individuals whose industry and courage might have been made available for the increase of national prosperity."

Continuing our extracts from Baron Ferdinand de Rothschild's Article we come to the subject of forced labour.

"*Though not directly a tax, the Corvée came within the spirit* "*and had the result of taxation, and oppressed the lower classes* "*as much as the Gabelle itself. The rural population had to* "*keep the main roads in repair without being remunerated for* "*their labour. They were forced from their fields at the time* "*they could least be spared, occasionally having to travel twelve* "*days to reach their allotted work.*"

Forced labour, though not legalised, is connived at and tacitly sanctioned by the Government throughout British India. The movement of troops and the tours of officials constantly lead to impressment, and result in much suffering and injustice. A few examples may suffice to illustrate the practice. A report of the Settlement Officer at Hoshiarpur in the Punjab, in 1876, contains the following statements:— "The movement of troops takes place at the time of the spring and autumn harvests, and even when the zemindars [landowners] escape impressment, the numbers of Kamins [working men] forcibly taken up for the carriage of stores greatly interferes with the work in the fields. I would earnestly call the attention of the Government to the crying evil of this system of forced labour. . . . . On all sides complaints reached me that men were seized indiscriminately, that they were excessively loaded and

underpaid, that is, that they are paid only for the marches they actually make, and no account is taken of the days spent at the Tehsil [where they are previously detained] and in coming from and going to their homes. I have been informed that, to avoid being constantly harassed, many proprietors have left their cultivation entirely to their tenants and become absentees, and that, if this state of things continues much longer, many of them are prepared to quit the country altogether. If the system of impressment and forced labour is to be maintained, it should be legally recognised and put under proper control."

Notwithstanding remonstrances, the practice continues unabated, and affords opportunities for much extortion, the agency employed in impressments being in the habit of seizing a greater number of coolies, carters, and boatmen than are wanted, and of releasing those from whom they receive a *douceur*.

The *Bombay Gazette* for November 22nd, 1876, relates how, in Lord Lytton's wanderings in the Kulu and Kangra districts, 1,500 coolies and 300 mules, impressed at a stage of the journey and detained for nearly a month awaiting the Viceroy's arrival, were ultimately made to march with their loads to the next station and dismissed with one day's pay. The writer describes the sufferings of the men and the animals during the weeks of detention, when they were left to live as best they could.

A third example might be added to shew how the same injustice and suffering result from the tours of minor officers. The following incident, reported from Bellary in December, 1877, was published in the Anglo-Indian press throughout India. A respectable farmer's carts and bullocks were forcibly carried off for the service of Lieut. Wilson, who held a Civil appointment in the district. This officer, on hearing that the subordinate, who made the seizure, had been prosecuted by the farmer, caused a charge

to be brought against the latter, in his own Court, for using insulting language at the time of the seizure, and sentenced him to imprisonment. The sentence was quashed on appeal to the Sessions Judge, but the farmer had meanwhile died in jail from the hardships inflicted on him in his incarceration.

In a second Article on *The Financial Causes of the French Revolution*, Baron Ferdinand de Rothschild records the events which connected the causes he had previously mentioned with the terrible results which ensued. "During the reign of Louis XIV.," says the writer, "the influence of Parliament had been overshadowed by the commanding personality of the King. . . . The first serious conflict arose upon a religious question which stirred up public feeling and tended to bring into prominence the financial questions of the day."

"*The King prohibited all remonstrance, and peremptorily* "*called on the Parliaments to register his decrees without delay.* " . . . *Louis XV. admonished the refractory magistrates in* "*the following autocratic strain :—'It is in my person alone that* "'*the Sovereign power resides; it is from me alone that the* "'*Courts derive their existence and authority: it is to me alone* "'*that the legislative power belongs, without any division, and the* "'*whole public order emanates from me.' All competent* "*observers regarded the outlook with profound anxiety, and* "*foresaw the dangers that must follow upon the arbitrary* "*proceedings of the King. Voltaire wrote in* 1764 *:—'Every-* "'*thing I see is sowing the seed of a revolution which must* "'*inevitably come.' Four years later Grimm wrote :—'The* "'*disquiet which agitates the minds of men, and leads them to* "'*attack religious and political abuses, is a characteristic* "'*phenomenon which foreshadows an imminent and inevitable* "'*revolution.'*"

In the time of the East India Company, their administration was periodically reviewed, and reforms were insisted

upon before a new Charter was granted to them. When, after the Mutiny, the government of the country was transferred to the Crown, and the powers of the East India Company and the Board of Control were vested in a member of the Cabinet, those conditions, which had, under the previous *régime*, led to the removal of many abuses and constituted a wholesome check on the administration, ceased entirely to operate, and a Secretary of State was left to exercise supreme power, subject to such restrictions only as were provided in the Act (106 of 1858) under which the transfer was made. These restrictions required the Indian Secretary of State to consult his Council, to pass no order involving the expenditure of Indian Revenue without the concurrence of that Council, and when, in other matters, he differed with its majority, to inform the Council of his reasons for acting against their opinion. Subsequently Act 67 of 1861 vested the Governor-General of India in Council with the power of making laws. Other clauses in both Acts, however, enabled the Secretary of State to nullify the restrictions just mentioned, to assume the entire control of the Legislature, and to peremptorily call on the Governor-General in Council to register his decrees as laws. In his despatch of November 24th, 1870, the Secretary of State admonished the Governor-General in the following autocratic terms:—"The Government holds in its hands the power of requiring the Governor-General to introduce a measure, and to require all the members of his Government to vote for it." Thus the two deliberative assemblies created by Parliament for the better government of India have been completely over-shadowed, and the Indian Empire is ruled by a Secretary of State virtually responsible to no Constitutional authority.

"*By the publication of Turgot's memorials to the King, the "people, for the first time, obtained some knowledge of the arbitrary "fashion in which the revenue had been raised, and the still more*

"iniquitous manner in which it had been spent. The financiers "thought it was possible to separate the financial from the general "reform of the system of government, and had no apprehension "that the work of emendation once set on foot, would inevitably "provoke a general revolution. The autocrats of this century "differ immaterially from those of preceding ages, and are no "more disposed to divest themselves of their absolute powers than "their predecessors were."

The Indian Budget is discussed by the people with greater intelligence every year, and the disastrous effects of autocratic power and financial disorganisation, indicated in the above extract, cannot fail to arise in India as they arose in France, unless the system of government, which brought about the present situation, is amended before its evil results have further developed. The oft-repeated declaration, however, that autocratic power is indispensable in India for securing the Revenue, renders the work of emendation particularly difficult.

"The national deficit formed a hideous chasm which no means "could be found to bridge over; the agricultural distress was "terrible; the plebeian class were overtaxed; the domination of "the upper classes was no longer bearable. The people, though "clear-headed and logical under normal conditions, allowed their "reason to run riot when their emotions became excited by an "accumulation of wrongs. The revolution, whose causes were "welded together as the links of a chain, was fated to come; "and when it came, its history was inevitably destined to be "written in letters of blood."

The danger of a revolution in India seems remote: the well-to-do classes, besides being deeply interested in the maintenance of order, are instinctively conservative, while the people generally are industrious, patient and law-abiding. At the same time their sufferings from oppressive taxation are increasing steadily, and it would be vain, under these circumstances, to expect that the time will not come

when the emotions of the people will become excited by a sense of accumulated wrongs; unless the chain, which links State extravagance and autocratic power with their inevitable consequences, is broken off by timely reform.

History has taught us that popular insurrection in India, when unaided by the soldiery, can always be put down by military force; and that mutiny in the Native Army need not be feared, so long as an overwhelming European force is stationed in the country. But complications in other parts of the world may, any day, necessitate the withdrawal of a portion of the English troops now in India; and it behoves us to enquire what effect such withdrawal would produce on the condition of the country.

From the Indian authorities we have favourable accounts of the spirit of our Sepoy army; but similar accounts were given during the administration of Lord Dalhousie, who himself declared that "the condition of the Native soldier left nothing to be desired;" and when officers wrote of "evil symptoms and of danger looming in the distance, they were denounced as defilers of their own nest, and as feeble-minded alarmists." * To rely, therefore, on general reports regarding a point so delicate and important, would virtually amount to courting deception.

The last great revolution in India was the rebellion of 1857-58, when British supremacy trembled in the scale for upwards of a year. The rebellion, after careful enquiry, has been ascribed to three concurrent causes:—

I. Widespread discontent produced among the Princes, the nobility, and the gentry, by our territorial annexations and the spoliation of private property.

II. Long felt discontent among the Sepoys, due to frequent unjust dealings in the matter of their pay and allowances, and to a deep-rooted conviction that the

* Kaye's *Sepoy War*, Vol. I., p. 325.

British Government were intent on Christianising the Indian population.

III. The withdrawal of English troops from India to meet the requirements of the Crimean and Persian wars.

Of these causes, the first has been kept alive to the present day by a systematic interference with the Treaty rights and the property of the Feudatory Princes, and by the continued spoliation of the Native nobility and gentry.

As regards the Sepoy army, the mutinous spirit which formerly moved it to resent every action of the Government which they considered as unjust to them, or as violating the pledges they had received, has not in recent years been openly manifested; but a large number of men, after spending a few years with their regiments, annually resign our service, and the country is thus being filled with a dangerous class of men, disappointed in their career, but drilled as soldiers and possessed of a certain amount of military training.

The third of the above-mentioned causes is still enclosed in the womb of futurity.

In conclusion, I would call the reader's attention to the following facts, to shew how little the Authorities in India know of what is stirring in the depths of Indian Society. Within little more than a twelvemonth of the departure of Lord Dalhousie (who saw nothing left to desire in the condition of the Native soldier), the Native Cavalry at Meerut (where English troops, including Cavalry and Artillery, were stationed) rose as a body, slew every Englishman they met, made their way to Delhi, fraternised with the native troops there, and, in an hour, wrested from our grasp the Imperial City, a post scarcely equalled in military and wholly unequalled in political importance throughout the British possessions in India.

VERITAS.

THE HOUSE OF LORDS

AND THE

BENGAL CADASTRAL SURVEY.

(*Reprinted from* THE LAW MAGAZINE AND REVIEW, *August*, 1893.)

TO THE EDITOR OF THE *Law Magazine and Review.*

SIR,—Lord Stanley of Alderley, on the 31st of July, asked the Indian Secretary of State:—1°. Whether his predecessor, Lord Cross, had stated in a despatch, dated December the 24th, 1891, that half the cost of the Cadastral Survey in the Benares division had been defrayed from a special fund contributed by landholders; 2°. Whether that special fund had been contributed by landholders for an entirely different purpose; 3°. Whether the diversion from that purpose had been concealed by the Government in India, and been divulged only by the eventual publication of the above-mentioned despatch; 4°. Whether the Government had consequently been guilty of a breach of trust; and, lastly, whether the papers relating to the case could be laid before Parliament.

Lord Stanley's question, which involved a direct charge of misappropriating trust funds, received from the Government an answer evasive and defiant, but conclusively corroborative of the fact that the fund in question had been diverted from its legitimate purpose without the

consent or knowledge of the landholders by whom it had been contributed.

In that answer Lord Kimberley stated:—I. That he approved the Bengal Tenancy Act, and that the measure, in its working, came up to expectations; II. That he believed that good grounds had been shewn for the Cadastral Survey required by the said Act; III. That there was a strong feeling in the Province, that, in consequence of the absence of the survey, the ryots had been, in many cases, deprived of their rights; IV. That the quotation from Lord Cross's despatch was correctly given; V. That there had been no concealment about the expenditure of the money, the intention to spend it having been discussed in published reports of 1877 and following years; VI. That the Indian Legislature had, by Act XIII. of 1882, subsequently authorised the Government to dispose of the fund in any manner they thought expedient; VII. That there was no necessity to lay the papers on the subject before Parliament; and, lastly, that the noble Lord would find the whole matter described in the North-Western Provinces Administration Reports of 1876-77 and 1877-78.

In this answer the first two statements are mere expressions of personal opinion upon matters unconnected with the expenditure of the special fund, and entirely irrelevant therefore, to the question that had been asked; while the fact that the ryots had petitioned the Government, earnestly praying that the Bengal Tenancy Bill, with its Cadastral Survey clauses, might not be passed, exposes the groundlessness of Statement III. Statement IV. admits the correctness of the quotation given from Lord Cross's despatch, and Statement V. argues that the intention to spend the money having been discussed in certain published reports, there was no concealment about the expenditure. Statement VI. shews that, after the money had been spent, Government passed a Legislative Act authorising

themselves to dispose of it in any manner they thought expedient.

Now, the reports referred to in Statement V. are those voluminous Provincial Administration Reports which appear annually a twelvemonth after the close of the year dealt with, and which are, by reason of their great cost, out of the reach of the general public. A discussion continued in a series of those volumes, while it might elicit the opinions of different officials regarding the disposal of the special fund, would not afford timely information regarding the final decision of the Government and the action taken thereupon. Justice obviously required that the contributors should have been consulted, and their views on the diversion of the fund been considered, before action was taken in the matter. The intention of concealment, at all events, becomes manifest in the fact that, when the Government subsequently found it necessary to justify their action by a legislative measure authorising them to dispose of the fund for a different purpose from that for which it had been contributed, they omitted to state or in any way to divulge the purpose adopted by them, although it had then already been fully accomplished.

This little episode, whether it be considered in its financial bearing or its moral aspect, is certainly not creditable to our Indian Administration; and, unfortunately, it is by no means an exceptional instance, seeing the many cases of a similar nature which have been noticed in the *Law Magazine and Review*, and in other publications, in recent years.

I am, Sir,

Your obedient servant,

SCRUTATOR.

OUR INDIAN FEUDATORIES

AND THE

ADMINISTRATION OF JUSTICE IN INDIA.

(*Reprinted from* THE LAW MAGAZINE AND REVIEW, *November*, 1893.)

I.

WHEN Lord Stanley of Alderley called the attention of the Government, in May last, to the injustice resulting from Executive Officers in India being vested with Judicial powers, and illustrated the subject by a recent case of grievous wrong wantonly inflicted on a distinguished member of Indian society, Lord Kimberley, the Indian Secretary of State, admitted that "it was contrary to right and good principle that the Civil and Judicial powers should be united in one person." But he declared that "the difficulty was that, if the present system were altered, it would be necessary to double the staff throughout the Empire, and that it was impossible at the present time to find the means of making the reform." In other words, that *the finances of the country were not in a condition to bear the additional expense.* This startling announcement that India is too poor to defray the cost of administering justice to her people, is deserving of particular attention.

For the last quarter of a century the Government have constantly represented the Indian Revenues in a favourable and promising light; and their latest *Financial Statement* shews that the year 1891-92 closed with a surplus of Rx. 467,000, while the aggregate surplus of the four years ending with 1891-92 amounted to no less than Rx. 6,804,000. It is true that the Estimates of 1892-93 and 1893-94 shew

deficits; but those untoward results are ascribed in the Statement, not to any falling off in the Revenue (which has on the contrary increased), but chiefly to three causes, namely, *loss by Exchange, increased Sterling expenditure,* and *increased Army expenditure.* The *loss by Exchange* is likely to be smaller than was anticipated, as the actual rate has so far ruled higher than the rate taken in the Estimates.

As regards *Sterling expenditure*, the heading comprises interest on Government loans, guaranteed dividends on railways, pensions and furlough allowances, and the Indian Secretary of State's salary and establishment; it also includes payments to the War Office, and the purchase of Army, Railway and other Stores. Of these six items of disbursement the first three are, from their nature, susceptible of no material reduction; but the fourth, viz., the Secretary of State's salary and establishment should, on the equitable principle adopted with regard to the Colonial Office, form no charge on the Revenues of India. This item, which is free from all Constitutional check at present, would, if dealt with on the principle referred to, come within the wholesome sphere of Parliamentary investigation. The fifth item, viz., the payments exacted by the War Office, has been repeatedly denounced by competent authorities as unduly heavy; and the cost of the Stores supplied by the India Office is believed, upon rational grounds, to be likewise excessive. A Commission appointed some years ago to report on certain Stores sent out for the port of Calcutta, found that they had cost some forty per cent. more than the sum for which they might have been procured through the ordinary channels of trade.

An equitable adjustment of the fourth and fifth items of *Sterling expenditure* and the adoption of a sound system for the purchase and shipment of Stores would relieve the finances of India to a very considerable extent; but the present difficulties of the Indian Exchequer appear to have

arisen chiefly from *Military expenditure* incurred in unsuccessful wars and expeditions undertaken for the subjugation of neighbouring tribes and principalities.

However flattering it might be to our national pride to see new territories added to our Empire, we cannot divert to such an object the resources of India, which are primarily and legitimately applicable to the wants of her people, without alienating our Indian subjects and endangering thereby the safety of our actual possessions.

Under all the above circumstances, the Secretary of State's answer to Lord Stanley, while it betrays a low estimate of the responsibilities of his Office, fails completely to justify the Government in refusing, upon financial grounds, to remove the blot which stains the administration of justice in India.

Moreover, the desired reform—namely, the Separation of Executive and Judicial powers—does not necessarily involve a question of finance. Supposing the number of officers, who now perform both functions promiscuously, were divided into two sections—the one charged with the assessment and collection of Revenue and general Executive duties, while the other adjudicated the criminal and litigious matters now dealt with by Revenue Collectors and their assistants—there seems no reason why double the number of officers should be needed, so long as the amount of work and the number of persons to do it, remained the same. On the other hand, it is not unreasonable to expect that division of labour would promote proficiency in each section, whereby the work in both departments would be done with greater expedition and skill; while the deplorable ignorance and partiality now so frequently displayed by Executive Officers when called to perform Judicial duties, would cease to disfigure our Indian Administration.

Furthermore, a scheme for effecting the desired reform without entailing additional expense on the State, was

submitted to the Government in July last by Sir William Wedderburn, Bart., whose successful career in the Indian Civil Service entitled him to a hearing on the subject. The scheme had been elaborated by an Indian District Collector and Magistrate of acknowledged merit, and approved by the Right Honourable Sir Richard Garth, late Chief Justice of Bengal; it was, nevertheless, refused at once, a proceeding which has naturally caused much surprise, seeing that it emanated from an able and trustworthy source, and aimed at terminating a state of things which the Government itself had just condemned in unequivocal terms.

The motive of the refusal, however, might be surmised from the fact that the fiscal demands in India, which have constantly increased since the Government of the country was transferred to a Cabinet Minister, became so oppressive that they could be recovered only by illegal processes. The question then arose whether the demands should be reduced to moderate dimensions, or the Collectors of Revenue placed above the Law. The Secretary of State unfortunately elected the latter alternative, and not only sanctioned Legislative measures removing Revenue matters and the conduct of Revenue Officers from the cognizance of the Law Courts, but vested Revenue Collectors with Judicial powers, which enable them to sit in judgment over their own acts, when these are called into question.

It will thus be seen that the reform now asked for, while it is imperatively needed in the cause of justice, cannot fail to involve serious financial consequences—a consideration which will doubtless account for the determined resistance offered to it by the Secretary of State. At the same time, it must be evident to all that, until Executive Officers in India are divested of their Judicial powers, and themselves made amenable to duly constituted Law Courts

controlled by the Chartered High Courts, the people will not have the means of appealing for protection and redress to Tribunals inspiring them with such confidence as that which they now repose in the decisions of the High Courts.

II.

The reform suggested in the foregoing pages would relieve our Indian fellow subjects of an amount of wrong and suffering which, judging from the frequency of the complaints recorded in recent years, may soon become intolerable. But even when that reform is conceded, an important section of the Indian people will still be left without a Court of Justice to protect their rights and their property—namely, the Princes and Chieftains generally known as our Allies and Feudatories.

Forgetful of the warnings given by the sanguinary rebellion of 1857, the Government, availing themselves of the *quasi* irresponsible powers acquired under the 21 and 22 Vict., c. 106, soon resumed the unscrupulous course of action which had brought that terrible retribution upon us. For a time territorial annexations were discontinued; but other methods were found for appropriating the wealth of our Allies and diverting the resources of their States from their legitimate channel—that of promoting the welfare and prosperity of their own subjects. Allegations of misrule in Native States, and the duty of protecting their subjects from oppression, furnished the British Government with pleas for interfering in their internal administration and acquiring control over their finances. In no instance had the people sought our protection, and while our interference constituted a flagrant violation of Treaties, the allegations themselves rested on the most flimsy ground, and often upon no ground whatever. When a public inquiry was demanded into the accuracy of those allegations, the request was generally ignored,

and threats, criminal accusations, and other modes of intimidation were resorted to for obtaining compliance with our requirements.

Solemn Treaties and written engagements exist between the Native States and the British Government; but when those Treaties are infringed by us, the stronger party, the other, or weaker party, has absolutely no means of redress: he is, moreover, warned by us against appealing to the Viceroy or Secretary of State, except through the British Agent posted at his Court; that is, through the very agency employed in perpetrating the wrong complained of. Can it be any matter for wonder that, considering their helpless condition, the wealth of Indian Princes and the resources of their States should have become objects of enterprise to so powerful and irresponsible a bureaucracy as the administrative system by which India is governed?

The recent case of the Maharaja of Kashmir furnishes a striking illustration of the tortuous policy which is pursued by the British Government towards our Indian Allies and Feudatories.

When the Punjab was occupied by the British, Gulab Sing, the grandfather of the present Maharaja of Kashmir, was, by a Treaty signed in 1846, confirmed in the possession of his territories on his paying £750,000 to us and his undertaking certain engagements which have all been faithfully executed. Indeed, Gulab Sing proved a most valuable ally during our great trouble in 1857; he sent a contingent of troops with artillery to co-operate with the British forces before Delhi; and, when offered an increase of territory in recognition of his assistance, he refused to accept it, saying that he had helped the British Government out of his loyalty and goodwill, and not with the object of receiving any remuneration. Gulab Sing died the same year, and our relations of amity with the Kashmir State continued uninterrupted during the reign of his eldest son

and successor, Runbir Sing, who died on the 12th September, 1885. It was in the latter year also that the revival of our "Forward-frontier" policy (which contemplated the conquest of territories bordering upon Afghanistan) occasioned a great and sudden increase in our military expenditure; and the Government resolved (as it became evident from their subsequent action) on appropriating the finance and general resources of Kashmir towards the cost of the expeditions they were to send beyond the northern boundary of that State.

Accordingly the Viceroy, as soon as he heard of Runbir Sing's death, wrote, on the 14th September, to Pertab Sing, his son and successor, that "the administration of the State had become seriously disorganised during the illness of his father; that many reforms were necessary; and that the Viceroy's Agent would remain with and help him," adding the following unjustifiable sentences:—

"I request your Highness to refer to him for a more detailed explanation of my views regarding the future administration of the Kashmir State, and I hope that you will be guided by his advice in carrying those views into execution."

Now, what were those views? They actually compassed the usurpation of the sovereign power and the appointment of a Council of State to rule the country in obedience to the orders of the Government of India, as conveyed through their Agent. But on what ground did the Government presume thus to take into their own hands the internal government of an Allied State? Can a necessity for administrative reforms (and where does such necessity not exist?) justify the violation of Treaties? The Indian Government pleaded that their motive was to relieve the people from oppression; but was the action taken by them such as to warrant that plea? Their

action consisted chiefly in the construction of military roads for marching troops to the northern frontier, in the collection of grain, forage and transport cattle, and in the levy and equipment of Kashmirian troops to serve as auxiliaries to our own soldiers. Were these operations, which absorbed the resources of the State, calculated to relieve the people from oppression? A system of forced labour prevails in Kashmir, as it prevails throughout British India; and the construction of our military roads, far from being a source of remuneration, has been one of injustice and suffering to the people whom we professedly came to relieve. Impressment by the British still continues in Kashmir, as may be seen from the *Pioneer* of the 5th September last, saying, "The unfortunate coolies who are pressed into the service for carrying the telegraph line to Gilgit, are constantly running away."

The new Maharaja replied to the Viceroy's letter on the 18th of the same month, saying that it pained him extremely to learn the intended change in the status of the British officer to be posted at Kashmir; that exactly when he had resolved on proving himself equal to the onerous and responsible duties of a good ruler, a change was made which would "lower him in the eyes of his subjects and in the estimation of the public." He went on to say:—

"I have sufficient confidence in the unbiassed justice of your Excellency's Government to hope that you will not form any unfavourable opinion of my abilities, intentions, and character, till the result of my administration for a sufficient length of time should justify a definite conclusion; that you will see no necessity for altering the status of the officer on special duty in Kashmir, and that there shall be no occasion for me to ask your Excellency to take into consideration the *Sanads* of Her Imperial Majesty's Government, securing to the Chiefship the full enjoyment of all the rights

of my father and my grandfather. I attach the greatest importance to the credit of earning the reputation of a just and benevolent ruler without interference from any quarter, and of preserving intact in all its relations the integrity of the State inherited from my father. It is fully known to your Excellency that I have only just now acquired the power of shewing to the world that, without interference from outside or the smallest diminution of the long existing rights and dignity of this State, I am able and willing, of my own accord, to introduce and maintain such reforms as are calculated to entitle a ruler to the lasting gratitude of his subjects."

It seems impossible after reading that letter to believe that, if our motive in interfering had been to improve the condition of the people, we should have declined to encourage the young Maharaja in his laudable ambition. On the other hand, our opposition is accounted for by the obvious fact that, however beneficial his contemplated reforms might have been for his subjects, they were not calculated to promote our military projects. Accordingly, we hampered him at once by imposing on him a scheming and aggressive Agent, and afterwards deprived him of all control over the administration of his State. Immediately after the death of Runbir Sing, a search was made for his treasure, and our Agent wrote on the 28th September, 1885: "As mentioned in my former letter, Maharaja Runbir Sing is said to have left considerable private wealth."

Meanwhile, in order to impress the world with the belief that our action had been called for by the Maharaja's incapacity for government, his character was maligned in semi-official organs in India, and the slander was repeated at home, while the Maharaja's letter of 18th September was kept from the public eye.

The immediate connection between the British interference in Kashmir and the projected British expeditions

from Gilgit, is shewn by the following passage in the Secretary of State's despatch of 27th November, 1885 :—

" Having regard to the character of the new ruler and to the aspect of affairs beyond the frontier in respect of which Kashmir occupies so important a position, I entertain no doubt as to the necessity of the measures now reported."

But, that the prosecution of our military scheme was the sole motive of our usurpation, was subsequently placed beyond the pale of doubt by the copy of a Memorandum of the Foreign Secretary to the Government of India, countersigned by Lord Dufferin on the 10th May, 1888, which appeared in the columns of an Indian paper in 1889. Lord Lansdowne, who challenged the accuracy of a part of the published copy, fully acknowledged, nevertheless, the correctness of the following portion thereof :—

" I do not agree with Mr. Plowden, the Resident in Kashmir, in this matter. He is too much inclined to set Kashmir aside and to assume that, if we want a thing done, we must do it ourselves. The more I think of this scheme, the more clear it seems to me that we should limit our over-interference, as far as possible, to the organisation of a responsible military force at Gilgit. If we annex Gilgit, or put an end to the suzerainty of Kashmir over the petty principalities of the neighbourhood, and above all, if we put British troops into Kashmir just now, we shall run a risk of turning the Durbar against us, and thereby increase the difficulty of the position."

The motive of our interference is thus shewn to be the prosecution of our " Forward " policy, and not the relief of the people of Kashmir.

The Maharaja's letter of 18th September, 1885, in which he appealed to the *Sanads*, viz., the Treaties and the Queen's Proclamation, must have proved most embarrassing to us, and appears accordingly to have been left unanswered. In order, however, to intimidate and silence the Maharaja, we

informed him, through our Agent, that letters in his handwriting had been intercepted, which disclosed treasonable correspondence with Russia and a design of procuring the death of the British Resident by poison. The Maharaja at once declared the letters to be daring forgeries; but his declaration was unheeded; and individuals about his person hinted at the possibility of his being deported to Rangoon, or tried for mutiny and hanged. He was kept under strict surveillance and permitted to see no one without leave from the British Agent, until harassed by insulting proceedings and constant persecution, he expressed his willingness to give a trial to the system of a State Council, as required by us, by himself appointing a Council, leaving the reins of the Government in its hands for five years, and afterwards resuming his ruling powers and adopting such form of administration as might then appear to him best suited for his country. He was asked to put the project in writing, and upon his refusing to sign it before he had some guarantee of its being accepted, he was subjected to great pressure by the British Agent, as stated by him in a letter to the Viceroy, and compelled to give his signature. No sooner, however, was this paper obtained, than it was held up to the world in the light of an edict proclaiming a voluntary resignation of all power in his kingdom. Semi-official papers in India and in England announced that the Maharaja of Kashmir had been engaged in treasonable correspondence with Russia; that ample proofs of the treachery were in the hands of the British Government; that the Maharaja, conscious of his guilt, had placed the resignation of his rule in our hands, and that the resignation had been accepted. So far, however, was the Government from possessing any such proofs or receiving such resignation, that they were, at the same time, instructing their Agent at Kashmir "carefully to avoid basing the Maharaja's deposition

exclusively either upon the letters or upon the resignation, but to base the decision of the Government upon a full consideration of all the circumstances." (See *Government Instructions, 1st April*, 1889.)

The Maharaja, eluding the spies by whom he was surrounded, wrote on the 14th May, 1889, an autograph letter to Lord Lansdowne, which he sent by a trusty messenger to Simla, and in which the following passages occur :—

"After much suffering and distress I have decided on addressing your Excellency through a special messenger. My country, my treasury, my army, my very life and blood I place at the disposal of the Government of our Sovereign-Mother the Queen-Empress. I know that I have been extremely misrepresented to the British Government. My enemies have succeeded in driving me into my present mean position, and I implore your Excellency to save me from it, taking my defenceless situation into consideration. The recent allegations against me about secret correspondence with Russia, the attempt to poison the British Resident and other stupid stories did not affect my mind in the least, for I was under the impression that a special officer would be deputed to inquire into those charges, when I should have an opportunity of shewing that they were false."

The Maharaja, then referring to the paper on the proposed Council for five years, thus explained the undue pressure under which that paper had been obtained :—

"With the information of these [incriminating] letters, Colonel Nisbet dashed into my room, and brought such a great and many-sided pressure in all solemnity and seriousness, that I was obliged to write what was desired or rather demanded by him in order to relieve myself for the moment, having full faith that your Excellency's Government will not accept such a one-sided view of the

matter, and that full opportunity will be given to me of defending myself.

"I am informed that, under orders from your Excellency's Government, I am expected to refrain from all interference in the administration, but that I am to retain my rank and dignity as Chief of the State. What rank and dignity can I retain under such circumstances? My condition is worse than that of a deposed ruler, inasmuch as he is removed and does not witness the insulting scenes to which I am exposed. If your Excellency wants to make me responsible for the administration of my State, I would ask to be placed in the position of a responsible ruler. In spite of what has been represented about my incapacity, I would ask your Excellency to give me a fair trial. From three to five years time will, I think, be quite sufficient for me to put everything into order, provided a British Resident throws no obstacle in my way. If this liberty is not to be allowed to me, I would humbly ask your Excellency to summon me before you, shoot me through the heart and thus relieve an unfortunate prince from unbearable misery and disgrace."

A reply to this urgent and all important letter was delayed until the 28th June, whereby time was gained for communicating on the subject with the Secretary of State, and the perusal of that reply may well fill us with shame and indignation at the subterfuges and artifice used in it in colouring and disguising the unfair line of conduct adopted towards a loyal and faithful ally. Touching the incriminating letters, all inquiry is withheld, and the Maharaja is insultingly told that "many of them have every appearance of being genuine." Then as regards the paper on a Council for five years, not only is the Maharaja's complaint of the means by which it was obtained disregarded, but the document is, by ingenious arguments, unfairly twisted into a permanent resignation of sovereign power. The

Viceroy's letter concludes with the following insincere sentence:—

"*In the interests of the people of Kashmir and of the ruling family itself, it has been impossible to leave the control of affairs in your Highness's hands.*"

III.

The affair attracted the attention of several Members of Parliament, and on the 14th March, 1889, the Under-Secretary for India, replying to the Member for East St. Pancras said:—

"The Government of India attach very little importance to the intercepted letters. No official papers have yet arrived in this country, and it is impossible therefore to say whether the Secretary of State will lay any on the table."

An equally mystifying answer was given to another Member a month later, and on the 20th of June, the Member for Northampton asked, among other questions:—

"Whether the State of Kashmir had been virtually annexed, and its ruler subjected to great indignities:—Whether a letter from the British Resident at Kashmir had been addressed to the Prime Minister on the 17th April, 1889, stating that he had been ordered by the Viceroy to inform the Maharaja that his Highness will be expected to refrain from all interference in the administration of the State:—Whether such a letter is a violation of the promises made by the Queen on the assumption by Her Majesty of the direct rule of India, that the Indian Princes should be safeguarded in their dominions and that no annexation of native territory should be made:—Whether the Maharaja had been informed that he will have no power of obtaining the State Revenues, and is not to attend the meetings of the Council, and that the Council is expected to exercise its powers under the guidance of the British Resident:—Whether the Secretary of State is aware that, in an auto-

graph letter to the Viceroy, the Maharaja has protested against the treatment to which he has been subjected, begging that if liberty cannot be restored to him, his life might be taken :—Whether the Secretary of State will state why the course described has been taken with the Maharaja, without any opportunity being given to him of being heard either by the Government of India or any other authority: —Whether an opportunity will be given to the Maharaja to apply for a reversal of the decree contained in the letter of the 17th April, 1889 :—Whether all papers connected with Kashmir will be laid on the table with as little delay as possible."

The Under-Secretary for India, in his reply, stated :—

"The Government has neither annexed the State of Kashmir nor subjected its ruler to great indignities. The Secretary of State has as yet received no information respecting the letter referred to. The Maharaja has voluntarily resigned the administration of his State, and his resignation has been accepted. There is no correspondence upon the subject which could be at present laid before Parliament without detriment to the public service."

On the 18th February, 1890, the Government were again moved for papers relating to Kashmir, and replied that they would be laid on the table. Four months later, viz., on the 20th June, and again on the 26th, the motion was renewed, when the following answers were given :—

"The papers are now before the Secretary of State and will be immediately presented to the House."

"I have to-day laid the papers on the table; their distribution depends on the printing authorities."

Ultimately, on the 5th July the Member for Northampton moved the adjournment of the House for discussing a definite matter of urgent public importance, viz., the taking away by the Government of India from the Maharaja of Kashmir the Government of his State and part of his

Revenues, whilst refusing to allow any Judicial or Parliamentary inquiry into the grounds for such action against a great Feudatory Prince.

In the course of a comprehensive speech the Member for Northampton stated:—

"The Maharaja has applied for a trial in India; that has been denied. The Secretary of State has been asked to sanction an inquiry and has refused. The leader of the House has been asked to appoint a Select Committee of inquiry and has also refused; so that neither Judicial, nor Parliamentary, nor Governmental inquiry is being allowed, although the gentleman has been subjected to penalties which, in the case of the meanest person in this country, would entitle him to have the accusation brought before some Tribunal, and witnesses against him heard. I should have pressed this claim for inquiry twelve months ago, but there were then no papers before the House. This Prince is entitled to that which any other subject of Her Majesty, if he be a subject of Her Majesty, is entitled to, viz., a fair trial before condemnation. If considerations of State can justify the Government of India [*i.e.*, the Secretary of State for India] in depriving one man of his authority and property unheard, there is no protection for any one throughout the whole of our Asiatic dominions. If the Maharaja has been criminal, let him be condemned and punished, but do not rob him under cover of a criminality which you dare not bring in evidence against him, and as to which you will allow no inquiry in India or here. Lord Cross said at Sheffield last year:—'We did interfere in the matter of Kashmir, and why? Because the people of Kashmir were so ground down by the tyranny and misgovernment of the Maharaja, that we were bound to interfere for the protection of the inhabitants.' Where, in these papers, is there one instance of this grinding down? I am not asking the House to say that this unfortunate man

is guiltless. I am asking them to say that he is entitled to be tried and to have an inquiry before he is deprived of his rights. In 1889 the Government deprived this gentleman of his Chieftainship. By what right?—By no right save the right of force. By what law?—By no law save the law of force. This man appeals to this House, not that you should declare that the Government of India is wrong—he simply asks for an inquiry, and he has a right to that inquiry. If you trample on Treaties, if your obligations to the Princes of India are to be broken, if the Native rulers are not to rely on your word, and English justice in India is a shadow and a delusion, let that be known; but let those who hold a contrary opinion vote for my motion as the means of protest."

The Under-Secretary for India, in his reply, said:—

"I will tell the House why it appears to the Secretary of State that this is not a subject which can properly be made matter for inquiry."

But nowhere, in the long speech which followed, is the promised explanation to be found. The charges regarding which an inquiry was asked are repeated with colouring observations, but without the slightest evidence in their support, and the speaker went on to say:—

"I am shewing what was the state of things which compelled the Government to take this action. I am going to shew the House why the Government, in the interests of humanity, were peremptorily called to take this step. (A laugh.) The Hon. Member may laugh, but I think it is not a laughing matter."

Then, after describing the miseries inseparable from forced labour and the hardships endured by cultivators, the Under-Secretary said:—

"This, Mr. Speaker, is the description of the condition of the unhappy people of Kashmir, which seems to have moved the laughter of the Hon. Member opposite."

On this the Member for County Donegal said :—

"I see too much suffering to regard it otherwise than with infinite sorrow and sympathy. I smiled that a gentleman, representing a Government guilty of such conduct, should claim universal benevolence and pretend to be benefitting the people while they are robbing an ancient prince of his inheritance. With regard to the letters on which so much stress has been laid, not one of them has been read to the House."

Four Members spoke afterwards, one of whom made the following observations :—

"The course of the debate has taken us from the point we ought to have before us. The complaint is that the Government have not given this man a chance of clearing himself of the charges that have been brought against him. The Right Hon. Member asks if we are going to stand in the way of justice being done in Kashmir; but is he going to stand in the way of justice being done to the Maharaja? If he asserts that the Maharaja is innocent of the charges brought against him——"

Under-Secretary: "There are no charges."

Member: "Then why is he deposed?"

The debate then came to an end, and, on a division, the motion for an inquiry was lost.

IV.

The result of the division on the 5th July, 1890, cannot fairly be ascribed to any conviction on the part of the majority, that the deposition of our ally was not a proper subject for inquiry. Both the great political parties were implicated in the denounced transaction, and were strongly interested, therefore, in preventing the proposed investigation.

The affair has not only cast a deep shadow on the character of our Indian administration; it has created a

danger which it would be unwise, in the light of history, to disregard and despise. Kaye observes, in his *History of the Sepoy War*, that in 1856 "we were lapping and lulling ourselves in a false security. We had warnings, and brushed them away with a movement of impatience and contempt. When Henry Lawrence wrote: 'How unmindful we have been that that which occurred in the City of Cabul, may some day occur at Delhi, Meerut, or Bareilly,' no one heeded the prophetic saying any more than if he had prophesied the immediate coming of the day of judgment."

Then, referring to the Cawnpore massacre, which filled the world with horror, the historian says:—

"Dundoo Punt, the Nana Sahib, felt that he hated the English and that his time had come; but all that was passing in the mind of the disappointed Mahratta was a sealed book to the English. Of course the whole story of the disappointment was on record. Had it not gone from Calcutta to London, and from London back to Calcutta, and again to Cawnpore? To Civilians a rejected memorial was so common a thing that, even to the best informed of them, there could have appeared no earthly reason why Dundoo Punt should not accept his position quietly, submissively, resignedly, after the fashion of his kind, and be ever after loyal to the Government that had rejected his claims. So, when danger threatened them, it appeared to the authorities of Cawnpore that assistance might be obtained from the Nana Sahib. He had been in friendly intercourse with our officers up to this very time, and no one doubted that as he had the power, so also he had the will to be of substantial use to us in the hour of our trouble. It was one of those strange revenges with which the stream of time is laden. 'The arbiter of others' fate,' had suddenly become 'a suppliant for his own;' and the representatives of the British Government were suing to one recently a suitor cast in our own political courts."

Greater similarity will be found between the case of the Maharaja of Kashmir and that of the King of Oude, whose deposition accelerated events in 1857. It was urged by the *Absorbing School* (under which name Colonel Sleeman denounced the supporters of our systematic spoliation) that "a grievous wrong would be done to humanity to have any longer abstained from interference. But what was the interference to be? Lord Dalhousie, though he proposed not to annex Oude, determined to take the Revenues; while the Court of Directors, the Board of Control, and the British Cabinet sanctioned annexation."* Thus in both cases humanity was the plea and spoliation the motive of interference. Let us also remember that "it was not until the crown had been set upon the work by the seizure of Oude, that the Nana Sahib and his accomplices saw much prospect of success. Men asked each other who was safe and what use was there in fidelity, when so faithful a friend and ally as the King of Oude was stripped of his dominions by the Government whom he had aided in its need."†

Pertab Sing's personal character seems different from that of Dundoo Punt: he may feel as keenly a wrong done to him; but revenge does not appear to be a ruling passion with him. Among the many victims, however, of our despoiling course, may there not be some who are brooding over their wrongs and biding their time?

J. DACOSTA.

* Kaye's *Hist.*, pp. 143 to 146. † *Ib.*, p. 579.

SOME RESULTS OF THE BENGAL TENANCY ACT.

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THE world has recently been startled by the discovery of gigantic frauds which spread ruin and desolation in the midst of thrifty and industrious communities. The doings of the Liberator Society, the Panama Canal Company, and certain banks and Trust institutions, are still fresh in the memory of the public; and it may be remembered that, in some of the criminal transactions referred to, officials of high rank, members of the Legislature, and even members of the Government were found to have participated. The Government itself, however, not having been implicated in any instance, was able to exercise its powers for bringing the guilty to justice, and thereby restoring public confidence. But when an unfair scheme emanates from a Government, and that Government is vested with extraordinary Legislative and Judicial powers, which enable it to give the force of Law to its arbitrary determinations, and to sit in judgment over its own acts, the Constitutional forces of society, intended for the repression of wrong-doing, become paralysed or misdirected; and national ruin and degradation are the inevitable results. Rebellion, in such circumstances, has almost invariably been the outcome of popular suffering and discontent; but rebellion against an autocratic Government, supported by a strong military force, must,

for a time, aggravate the public calamity, whatever reforms might ultimately ensue for the benefit of future generations.

These reflections are suggested by a Government land scheme, introduced into Bengal in 1885, and which threatens to compass the ruin of the wealthiest province in our Indian Empire. Fragmentary information on the subject has now and then appeared in telegrams from India; but a complete and just apprehension of the measure—of its objects and probable results—can be arrived at only through a retrospect into the administrative history of the province.

When the battle of Plassy, in 1757, wrested Bengal from its Mahomedan conquerors, the country had been greatly impoverished by the rapacity of the invaders; and agriculture, which constituted its chief industry, was depressed to a very low condition. The British, on their accession to power, imposed upon land a tax equal to ten-elevenths of its rental, and reserved the right of enhancing their assessment every ten years, wherever the land should meanwhile have been improved, either by clearances and extended cultivation or otherwise. It will at once be seen that no stronger discouragement could have been offered to industry and to the employment of capital in agricultural enterprise than the uncertainty thus introduced into the prospective demands of the Government; and this circumstance will, doubtless, in a great measure, account for the state of stagnation in which the country remained for nearly half a century after it came under British rule. The Governor-General wrote on the 18th September, 1783:—

"I may safely assert that one-third of the Company's territory is now jungle inhabited only by wild beasts. Will a ten years' lease induce any proprietor to clear that jungle and encourage ryots to come and cultivate his lands when, at the end of that lease, he must either submit to be taxed

ad libitum for the newly cultivated lands or lose all hopes of deriving any benefit from his labours, for which, perhaps, by that time, he will hardly be repaid?"

A proposal was then submitted by the Governor-General for fixing the land-tax in perpetuity, as a measure calculated to encourage agriculture, lead to the production and accumulation of national wealth, and inspire the people with loyalty and attachment to their new rulers. The proposal was carefully considered for several years, both in India and in England; Mr. Pitt brought his powerful mind to bear on the subject; and after an exhaustive debate in Parliament, the proposed measure was sanctioned in 1792, and the requisite declarations were promulgated in Bengal on the first day of the following year. Regulation I. contains the following assurance:—

"The Governor-General trusts that the proprietors of land, sensible of the benefits conferred upon them by the public assessment being fixed for ever, will exert themselves in the cultivation of their lands, under the certainty that they will enjoy exclusively the fruit of their own good management and industry."

The Preamble to Regulation II. gave the following pledges for the due performance of the compact then concluded between the British Government and the proprietors of land in Bengal:—

"All questions between Government and the landholders respecting the assessment and collection of the public revenue, and disputed claims between the latter and their ryots, have been cognizable in the Courts of Maal Adawlut or Revenue Courts. The Collectors of revenue preside in the Courts as judges, and an appeal lies from their decision to the Board of Revenue, and from the decrees of that Board to the Governor-General in Council in the department of revenue. The proprietors can never consider the privileges which have been conferred upon them as secure, whilst the

revenue officers are vested with these judicial powers. Exclusive of the objection arising to these Courts from their irregular, summary, and often *ex parte* proceedings, and from the Collectors being obliged to suspend the exercise of their judicial functions whenever they interfere with their financial duties, it is obvious that, if the Regulations for assessing and collecting the public revenue are infringed, the revenue officers themselves must be the aggressors, and that individuals who have been wronged by them in one capacity can never hope to obtain redress from them in another. Their financial occupations equally disqualify them for administering the laws between the proprietors of land and their tenants. Other security, therefore, must be given to landed property, and to the rights attached to it, before the desired improvements in agriculture can be expected to be effected. Government must divest itself of the power of infringing in its executive capacity, the rights and privileges which, as exercising the legislative authority, it has conferred on the landholders. The revenue officers must be deprived of their judicial powers. All financial claims of the public, when disputed under the Regulations, must be submitted to the cognizance of Courts of judicature superintended by judges who, from their official situations and the nature of their trusts, shall not only be wholly uninterested in the result of their decisions, but bound to decide impartially between the public and the proprietors of land, and also between the latter and their tenants. The Collectors of revenue must not only be divested of the power of deciding upon their own acts, but rendered amenable for them to the Courts of judicature, and collect the public dues subject to a personal prosecution for every exaction exceeding the amount which they are authorised to demand on behalf of the public, and for every deviation from the Regulations prescribed for the collection of it. No power will then exist in the country

by which the rights vested in the landholders by the Regulations can be infringed, or the value of landed property affected. Land must in consequence become the most desirable of all property, and the industry of the people will be directed towards those improvements in agriculture which are as essential to their own welfare as to the prosperity of the State."

The land-tax under the Permanent Settlement having been maintained at the excessive rate which had previously been imposed—but could never be realised—the landowners were, at first, unable to collect sufficient amounts of rent for the due discharge of the Government demand; and those among them who possessed no other means but their lands, lost their estates under a clause in the new Regulations which rendered land liable to attachment and sale for arrears, when the revenue was not brought in on the day fixed for its discharge. Notwithstanding this unfortunate circumstance, the national prosperity looked for by the authors of the Permanent Settlement, was fully realised. Under the protection afforded by the Regulations of 1793, industry and capital converted the jungles of Bengal into an almost uninterrupted field of cultivation; and while the land-tax in the province has ever since been collected with a regularity unknown in the rest of British India, new sources of revenue far exceeding the land-tax itself have sprung from the wealth produced by agriculture under the operation of the Permanent Settlement.

"The Bengal of to-day offers a startling contrast to the Bengal of 1793; the wealth and prosperity of the country have marvellously increased—increased beyond precedent—under the Permanent Settlement. A great portion of this increase is due to the zemindari body as a whole, and they have been very active and powerful factors in the development of this prosperity." (See *Burdwan Commissioner's Report, Gazette of India*, 20th October, 1883.)

Meanwhile, the expenditure of the Government of India, under the irresponsible system of administration inaugurated in 1858, increased by nearly twenty millions a year—viz., from 34¼ millions in 1856-57 to 53½ millions in 1869-70; and among the many projects formed for increasing the revenue, a proposal was entertained to confiscate the wealth produced under the Permanent Settlement Regulations, through additional burdens to be imposed on land, in violation of the pledge given in 1793. This dishonest proposal met, however, with strong opposition from the officials in India, through whose instrumentality it was to be executed; and when the Indian Secretary of State sought the support of his Council in the matter, he was told by one of its members: "We have no standing ground in India except brute force, if we forfeit our character for truth."

In short, the condemnation of the scheme by Anglo-Indian officials, both in India and in England, rendered an overt repudiation of public faith impracticable at the time.

But the unfair project was not abandoned; covert and tortuous ways were resorted to for its accomplishment; and the conspiracy (if it may so be called) was prosecuted with an ingenuity and a perseverance worthy of a better cause. The first step was to destroy the safeguards which had been provided for the due performance of the compact of 1793. To this end the independent Law Courts then established were undermined and weakened; and the condemned system of vesting Revenue officers with Judicial powers was revived, although its pernicious effects had been clearly demonstrated in the Preamble of Regulation II. The next step was to put such a construction on the compact of 1793 as would justify the Government in altering its conditions. After these preliminary steps, the object of the scheme—namely, increased revenue from permanently settled land—was to be gained through a

Legislative enactment which should (1st) deprive landowners of their power to enhance rents, (2nd) create middlemen entitled to fixity of rent, but empowered to rack-rent their sub-tenants the cultivators; and (3rd) perpetuate these conditions by annulling the validity of contracts, empowering the middlemen to sell their holdings with the privilege of fixed rents, and debarring landowners, who might purchase such holdings, from either extinguishing the right to the said privilege, or adding the land to their home farms. By these provisions the middlemen would be placed in a position to absorb the bulk of the profit yielded by the land, and the ultimate object of the scheme could be attained through taxation imposed upon them. Not being a party to the Permanent Settlement, these middlemen would not have the right which the landowners possess, of claiming exemption, under that compact, from further taxation on profits derived from land.

A pretext for initiating the necessary legislation was found in a long-standing complaint, that the defective state of the law subjected landowners to undue delays and expense in the recovery of rents. On pretence of remedying that evil, the Government introduced a Bill in 1878, with the following statement in justification of the step:—

"Notwithstanding the fact that in about 75 per cent. of the suits for arrears of rent the claim is really not contested, the landowners have often found themselves unable to recover their just dues, without submitting to a process which entails costs that may never be recovered, and delays that are frequently embarrassing and ruinous. . . . . If they cannot recover their dues easily and effectually from their tenants they must under penalty pay the amount themselves—a position which the State is obviously bound to render as little burdensome as possible."

This Bill was soon afterwards withdrawn, upon the plea that as the law on Rent seemed to require revision it was

advisable to deal with both subjects in one Bill. No one, however, had asked for a revision of the law on Rent, and the plea thus adduced for dropping a measure of acknowledged urgency naturally created misgivings in the public mind as to the real intentions of the Government. Regardless of this feeling the Government appointed a "Rent Commission," composed almost exclusively of its own officers, who, without examining the parties concerned, drafted a complicated Bill of some 230 sections, besides schedules and appendices, the nature of which was subsequently exposed in the reports of twenty-one Revenue and Judicial officers who were consulted on the subject. Of these voluminous Reports only small extracts from a few can find room here; but these will suffice to show the unprincipled character of the measure, and a striking contrast between the spirit of unfairness and duplicity which inspired the Bill, and the sound views of its official critics.

"If the definitions of tenure-holder and ryot are maintained, the conventional meaning of the word 'ryot,' the nearest equivalent of which is 'yeoman,' will disappear, as will indeed the class itself; for the inevitable tendency of the proposed law is to make *right-of-occupancy ryots*, in fact, as well as in name, middlemen. The definition of tenure-holder should be altered to signify exclusively a middleman between a proprietor and a ryot. You cannot alter the conventional meaning of words by Act of Parliament. Chapter VI. provides for the drawing up of a local table of rates of rents and produce. I believe that it will be practically impossible to draw up such tables. Chapter XI. introduces a state of things which the Preamble of Regulation II. of 1793 stated was found unsatisfactory." (J. P. Grant, District Judge of Hoogly.)

"Ever since 1793 we have allowed men to buy estates and tenures in the belief, fully justified by our action, that

no interference would take place, and it is not fair to those persons suddenly to uproot the conditions on the faith of which they have invested their money. The definition of ryot has purposely been left obscure. Sects. 14 and 15 turn an occupancy ryot into a tenure-holder. This is said to have been done for the convenience of the draftsman. It is a matter of no moment whether he finds an Act easy or difficult to draft; that should not occupy the mind of the legislator, whose attention should be directed solely to the justice and utility of the law. It is stated that the procedure under Chapter XI. has been invented with a view to removing from the Civil Courts the power of reversing the decisions of revenue officers. I do not see how this is to be reconciled with the Preamble of Regulation II. of 1793." (J. Beames, Commissioner, Burdwan Division.)

"As to the voidance of contracts, the proposed law appears to introduce a dangerous precedent. The law is held to override contracts entered into with deliberation, and this without any inquiry whether the contract was voluntary or not. Sect. 73 says that a contract, in a certain case, made in favour of a ryot, must be enforced, while sect. 50 protects him from contracts which are against him. Sect. 74 enforces a contract which is against a landowner, while sects. 87 and 90 repudiate contracts which are in his favour. These instances teach the ryots that there is no moral obligation in promises." (E. E. Lowis, Commissioner, Chittagong Division.)

"The survey and register under sect. 7 will, I believe, be a work of enormous difficulty. Every plot will be disputed, and there will be in effect a civil suit contested in every stage before the Survey officer, the Commissioner, the Board, and the Government. It seems to me to be more expedient to allow each case to be settled by the Courts on its own merits, in case of dispute, than to cause a wide-spread discord by sending a roving Commission about the

country to agitate questions in which the parties concerned are themselves quiescent. I have received some strong representations as to the delay which will be caused to the landlord by his not being allowed to eject any occupancy ryot for arrears of rent. This is one of the points where the landowner, asking for bread, has been given a stone." (R. Towers, District Judge, Tipperah.)

"I cannot consider the provisions of the Bill as fair to the landowners with reference to the rights which they have enjoyed for a century; and yet I am precluded from calling into question the principles upon which the Bill is founded. As to the abolition of freedom of contract, I altogether fail to see the justice of the provision. I find nothing of the kind in any of the Permanent Settlement Regulations. The ryot is to be allowed freedom in every respect, except when he enters into an agreement with his landlord. If this is not setting class against class and teaching the ryot to look upon the landlord as his natural enemy, words have no meaning. With regard to the ordinary ryots, the provisions of the Bill militate against all previous practice, by which a tenant-at-will was allowed to hold in accordance with agreement entered into between him and his landlord. I am not prepared to support those provisions which fix a maximum of rent to be demanded. As to the provisions for the recovery of rents, which were the beginning of the legislation which has found its outcome in the present Bill, I am afraid that the landlords will hardly be satisfied with the relief which has been given them. *On the principle on which this Bill is drawn*,* the landowners could not expect further relief. I suspect, however, that they expected, and I am not prepared to say that they had not a good right to expect, very much more substantial relief, as the outcome of their application

* Mr. Monro may have underlined these words in order to convey the opinion that the object of the Bill was, not to relieve, but to despoil the owners of land.

for a summary method of realising rents." (J. Monro, Commissioner, Presidency Division.)

"I think the sub-letting power given to *Occupancy ryots* a doubtful and dangerous part of the Bill. A long string of rent-payers and receivers must be bad. As far as an Occupancy ryot is a rent receiver, he is one of the objectionable class of land-jobbers. The net result of the Bill will be the extinction of the present class of [cultivating] Occupancy ryots, and the transfer of their rights to money-lenders. We think the preparation of a table of rates impracticable. The Conference is unanimous in saying that the freedom of contract should not be withheld." (F. M. Halliday, Commissioner, Patna Division, in Conference.)

"The right of occupancy is for the protection of the cultivator; it seems inequitable, therefore, to allow a non-cultivator to be thrust on the proprietor as an *Occupancy ryot.* If a ryot is evicted from a holding in default of payment of rent, there is nothing in this sect. 129 to prevent his demanding compensation." (N. S. Alexander, Commissioner, Dacca Division.)

"It has been asserted that one of the objects of the present legislation is to afford facilities to the landlord for the recovery of his rent, whereas there can be but little doubt that the recovery of rent has been made more difficult than it previously was. Sect. 50, when enacted, will lead to a very general loss of right of Occupancy holdings by the present generation of ryots, whose holdings will be at once bought up by the money-lending classes, the ryots becoming rack-rented pauper-cottiers or landless labourers." (G. N. Barlow, Commissioner, Bhagulpore Division, in Conference.)

"The principle involved in sect. 47 seems almost a ludicrous way of making out an Occupancy right. There is to be a perfect transformation scene on a day yet to be

fixed. On that day villagers, who may be merely tenants-at-will and may never have held one piece of land for more than three days at a time, will suddenly become ryots with rights of Occupancy in the plot last held, all contracts to the contrary notwithstanding. This renders all contracts under Act VIII. of 1869 mere waste paper. I cannot think that circumstances justify such flagrant infringement of the landowners' rights. Sect. 50 bestows valuable privileges on the ryot; would it be too much to ask that one provision be added on behalf of the man at whose expense we are generous? viz., that the Occupancy right be liable to be revoked for non-payment of the 'fair and equitable rent' on the due date? If rents are no longer to be fixed by consent, but by a table of rates, how is such a table to be prepared? It pre-supposes a certain dead level in the out-turn of lands, as if improvement and industry were of no account." (C. A. Samuells, Collector of Bankura.)

"If this Bill is intended to protect ryots, I fail to see why it should allow sub-letting. A ryot ceases to be a ryot when he ceases to cultivate, and when he sub-lets, he becomes the most oppressive of landlords, a petty middle-man." (H. Mosley, Collector of Moorshedabad.)

"Constant changes in legislation are greatly to be deprecated. In the present instance I do not think that any such necessity has arisen." (E. J. Barton, Collector of Jessore.)

"The Bill proposes to effect a violent revolution in the ownership of landed property, affecting the interests of above fifty-five millions of people. Such important changes, affecting detrimentally the rights and interests of a large and important class, should only be made on very strong grounds; such as, for instance, the grounds advanced by Mr. Gladstone when introducing a somewhat similar measure in Ireland in 1870. The result in that case might well make thinking men pause before introducing it into

another country, even if the circumstances under which the Irish measure was applied existed here. No special or strong grounds, political or other, exist in the present case, nor have any been asserted in support of the present Bill. In 1877, the Lieutenant-Governor thought special legislation was necessary to enable the zemindars to recover their rents. Matters have in no way changed since then. There has been no general feeling of discontent among the ryots. I am sure that all the Government officers will agree in this, and in thinking that the ryots of Bengal are, as a body, in a contented, prosperous condition; nor will it be denied that there has been no general request on the part of the ryots for such legislation as is now proposed. It is clear, then, that the present measure is proposed, not because it is necessary, but because, in the opinion of the Government, the land system of the Bill is preferable to the existing one. It seems to me that the passing of such a Bill would not be justified by the circumstances, and that even if there were no other objections it would not be right to pass it. But there are other and, in my opinion, serious objections to the Bill. First, it is an infringement of the rights guaranteed by the Permanent Settlement. I do not forget that the Settlement allows Government to interfere for the welfare and protection of the ryot. But if it had been intended that such interference should have amounted to the destruction of the proprietary rights then conferred, such rights would never have been conferred, and I request reference to paragraph 11 of this letter, as it can scarcely be alleged that interference is necessary in the slightest degree for the protection of the ryots. Next, we have for 90 years treated the zemindars as real proprietors, making them discharge the duties of proprietors in regard to matters connected with police, crime, furnishing supplies to troops on the march, and, above all, the collection of public demands. Is it fair or just to deprive them now of the most important rights of a pro-

prietor?" (Lord H. Ulick Browne, Commissioner of the Rajshahye and Cooch Behar Division.)

The undisguised opposition of these officials (whose advancement in the Service so greatly depended on the good-will of the Government) testifies to the indignation which they must have felt at being expected to co-operate in a scheme of injustice and oppression. Lord Ulick Browne was charged at the time by the Lieutenant-Governor, in a despatch addressed to the Government of India, with having, when consulting his subordinates on the Tenancy Bill, made comments which amounted to "prejudging the issues which they were called to consider." But the Lieutenant-Governor had laid himself open to a similar charge in paragraphs 5, 6, 7, and 8 of his Circular calling on the district or superior officers for their opinions on the same Bill; and the omission of those paragraphs in the copy published in the official *Gazette* would tend to show that His Honour was not unconscious of their exceptional character.

When the Bill was submitted for the Secretary of State's sanction, the following objection was raised by the Council of India, and stated in Lord Hartington's despatch of 17th August, 1882:—

"Your proposal in the first place annuls the distinction deeply rooted in the feelings and custom of the people between the resident and permanent and the non-resident or temporary cultivator. This, when your avowed intention is to restore to the ryots their ancient position and rights, appears to me anomalous and undesirable. In the next place, it abandons a principle on which the Statute law has been based for nearly a quarter of a century, and which was adopted in 1859 by the Legislature on rational and intelligible grounds."

The Bill was also submitted for the opinion of the High Court of Bengal, and the Chief Justice's Minute of

6th September, 1882, of which the following is an extract, exposes its character from a legal point of view:—

"I find that some pains have been expended upon the argument that the Government, in case of necessity, has a right to interfere with vested interests, although created by so solemn a compact as that of the Permanent Settlement; and it has been further argued that in the Settlement itself the Government has expressly reserved such a power of interference. For my own part, I consider the argument quite superfluous. I take it to be clear that any Government, *in case of real emergency*, has a right, so far as it is necessary, to interfere with vested rights to whomsoever they may belong, and howsoever they may have been created. But then I take it to be equally clear that, *without some such actual necessity*, no Government is justified in interfering with the vested interests of any class of its subjects; more especially when those interests have been created and defined, after due consideration, by the State's own legislative enactments.

"The true question for our present purpose is whether there does or does not exist at the present time any such necessity as justifies the Government in depriving the landlords of Bengal of their rights and privileges in the manner proposed by the Bill. For myself I see no such necessity, and I am bound to say that, amongst the many complaints on behalf of the ryots, which have been published by the Government in connection with this subject, I have been unable to find a single statement that the ryots themselves desired anything of the kind.

"The deprivation to which I allude, was never, so far as I can ascertain, even suggested by the ryots. It was proposed for the first time by certain members of the Rent Commission; and it is supported, as I understand, not upon the ground of actual necessity, but because, in the opinion of those gentlemen, the ryots were, or ought to

have been, in a better position some ninety years ago than they are now; and that it is desirable, in the interests of the State, to place them in that position."

Sir Richard Garth, after fully discussing the other provisions of the proposed Law, concluded his Minute in the following terms:—

"For the present my task is done. I trust that, with some of my countrymen at any rate, the humble but earnest effort that I have made to protect the landlords in Bengal from what appears to me nothing short of impending ruin, may find some support and sympathy. I trust that the landlords themselves may be awakened in time to their own danger; and I hope and pray that the policy of confiscation—which has borne, and is bearing still such terrible fruit in Ireland—may be averted by the blessing of God from our Indian possessions."

These condemnatory opinions, expressed by some of the highest authorities, led to the Bill being kept back for upwards of two years. Meanwhile the ryots perceived that the proposed legislation, while it deprived the landowners of their proprietary rights, also destroyed the protection which the ryots enjoyed against the undue enhancement of their rents. The subject was then carefully discussed by ryots all over the country, and numerous petitions came from them, earnestly praying the Government that the Bill might not be passed. The prayer was unheeded, but the matter continued to be kept in view, though the Bill was seemingly dormant.

In 1885, the change of Ministry, and the increased excitement over the Irish Home Rule question, which engrossed public attention at home, seemed to offer a favourable opportunity to the Government for carrying the Bengal Tenancy Bill through its final stages, and the Legislative Council was accordingly summoned for the purpose. On that occasion a non-official member, the

Maharaja of Darbhanga, after once more pointing to the evil tendencies of the measure, concluded his speech in the following words:—

"I have at any rate the satisfaction of feeling that I have acted as the true friend of my country and of the Government in warning you of the political dangers which, I believe, underlie the proposed legislation."

Another non-official member, Baboo Pearymohun Mookerjee, said:—

"I deem it my duty to entreat your Lordship and this Honourable Council to pause before passing this Bill. It has been observed by a high authority, Jeremy Bentham, that 'the legislator is not the master of the disposition of the human heart; he is only its interpreter and its minister. The goodness of the laws depends on their conformity to general expectation. The legislator ought to be well acquainted with the progress of that expectation in order to act in concert with it.' Allow me, my Lord, to ask: Has the Bengal Tenancy Bill satisfied the expectations of either the landlords or the ryots? The resolutions passed at the meetings held in different parts of these provinces, the numerous memorials which have been submitted to your Lordship by landlords and ryots alike, and the public opinion which has found expression in every section of the native and Anglo-Indian press, give an emphatic answer to the query. The landlords stand aghast at the dreadful vista of unmerited loss which the measure threatens them with. The ryots loudly express their consternation at the operation of a law said to have been conceived for their benefit, but which they firmly believe will make their position much worse than it is at present. I appreciate the desire of the member in charge of the Bill that there should be a finality at some stage of these discussions; but the passing of a measure which is disliked by all classes is not likely to allay the agitation which discussions regarding

it have given rise to. Let us not cry peace where there is no peace. In questions of such magnitude, complexity, and importance, where every word and sentence we seek to clothe with the authority of the law may be fraught with the gravest consequences to millions of unrepresented subjects of Her Gracious Majesty, it can never be unwise to pause and take a forecast of the future. A question which I beg your lordship and this Council to consider is whether it is desirable to pass without further inquiry and deliberation a measure which, it has been publicly said, would shake the confidence of the people in the faith of the British nation, and which would set brooding over their wrongs a large and important section of the community who are noted for their loyalty and devotion to the British Crown."

The Viceroy's speech, which ended the debate, sounds like a derision or an insult to human intellect in its description of a measure which violates every dictate of justice and humanity, and aims simply at spoliation. His Excellency said:—

"I believe that the Bill is a translation and reproduction, in the language of the day, of the spirit and essence of Lord Cornwallis's Settlement; that it is in harmony with his intention, and is conceived in the same beneficent and generous spirit which actuated the framers of the Regulations of 1793."

It seems incredible that these words could have been uttered with any feeling of sincerity. But what right have we to expect a sincere expression of opinion from any official member of the Indian Legislative Council, when we know that the members of that body are not free agents, but are bound, irrespective of their personal feelings and opinions, to act in obedience to the instructions transmitted by the India Office? Has not the Indian Secretary of State, in his despatch of 24th November, 1870,

distinctly intimated to the Governor-General of India in Council, that "the British Government must hold in its hands the power of requiring the Governor-General to introduce a measure, and of requiring also all the members of his Government to vote for it?" Under these conditions the Bengal Tenancy Bill could not have been passed without the sanction of the Secretary of State for India; and the responsibility of the measure must, therefore, attach solely to that Cabinet Minister. But is that Cabinet Minister himself a free agent as regards the administration of India? Is he at liberty to sanction a measure calculated to benefit the Indian people, or to abstain from a course injurious to them, when his colleagues in the Cabinet are opposed to the former or insist on his adopting the latter? Can he, moreover, reasonably be expected to withstand the influence of the British Constituencies on whose support his existence as a Minister, and the strength and safety of the Cabinet of which he is a member entirely depend? If these questions are to be answered in the negative, how are the Indian people, upon whom an irresponsible system of government has been imposed, to be protected either from a dishonest Executive, or from the exigencies of British Constituencies, when these are opposed to the interests of India?

Considering the constitution of the Indian Legislature, it will be easily understood that the Bengal Tenancy Bill, notwithstanding its flagrantly iniquitous character, was passed without the least hesitation by the standing official majority of the Council; and although eight years have since elapsed the Government have been unable, as yet, completely to carry out its provisions. The ryots, as a body, having shewn disinclination to accept the insidious privileges offered to them, the Government are preparing to execute forcibly the Cadastral Survey which is to enable their officers to construct a record-of-rights on the arbitrary lines laid down in

the Act, and to draw up the table of rates on which rents are to be based. Meanwhile landed property has been considerably depreciated under the Confiscatory Clauses of the measure; and the increased difficulty it has introduced in the recovery of rents, has placed a large number of proprietors in the impossibility of satisfying the Revenue demand on the due date. Sales for arrears have, in consequence, increased ever since the Bill was introduced. In 1882 and 1883 the estates and shares of estates attached by the Revenue officers amounted to 9,735 and 10,789 respectively; and the Calcutta *Englishman* of 1st December, 1893, states, in reviewing the latest Administration Report of Bengal:—

"Nearly 17,000 estates and shares of estates became liable for sale for non-payment of the Government demand last year. Forty-three estates were bought by the Government for the nominal sum of 54 rupees."

Thus, one of the noteworthy results of the legislation, which was avowedly introduced for the assistance of landowners in the recovery of rent, has been to deprive thousands of them of their estates, and to destroy the confidence of the people in the good faith and good intentions of their rulers. The ultimate effect of the *Bengal Tenancy Act*, when fully enforced, must be to create strife and litigation, to extinguish the spirit of peaceful industry so marvellously evoked by the wise legislation of 1793, and to drive an impoverished people to lawless modes of subsistence.

J. DACOSTA.

THE LEGISLATIVE COUNCIL AND JUDICIAL INDEPENDENCE IN INDIA.

(*Reprinted from* THE LAW MAGAZINE AND REVIEW, *February*, 1894.)

A LETTER TO THE EDITOR.

SIR,—In May last the Government, in reply to Lord Stanley of Alderley's motion regarding the administration of justice in India, admitted that "it was contrary to right and good principle that the Executive and Judicial powers should be united in one person," but declared that it was impossible, at the time, to find the financial means for making the necessary reform.

Now, the difficulties of the Indian Exchequer are shewn, in the last Budget statement, to have arisen, not from diminished revenue, but almost entirely from increased expenditure. It seems difficult, therefore, to believe that, during a period of profound peace, when no danger looms in the immediate future, some retrenchment in the overgrown Army expenditure of India should not be practicable, such as would admit of initiatory steps being taken towards the reform of a system condemned on all sides, and which the Government itself admits to be wrong in principle. Far, however, from any endeavour having been made towards that end, the evil is being seriously aggravated by the creation of new Courts of Judicature, which are to be presided over, not by duly qualified and independent Judges, but by Government servants directly amenable to the influence and control of the Executive.

In 1892 the "Madras City Civil Court Act" created a tribunal having a concurrent jurisdiction with the Chartered High Court of the Presidency, but evidently intended, through favourable clauses regarding costs, to divert suits

from the High Court, which inspires the people with confidence, to the newly-created tribunal, the constitution of which is looked upon with dismay. Since then, a Bill has been introduced in the Legislative Council of the Viceroy—the "Presidency Small Cause Court Bill"—for the purpose of creating another tribunal on the same lines; and when, at the sitting of the Legislative Council on the 4th January last, the Legal member proposed that the Bill should be withdrawn, unless the jurisdiction of the projected Small Cause Court were limited to suits of 1,000 Rupees and special qualifications were imposed upon the Judges, His Excellency, the Viceroy, as President, immediately intervened, declaring that the statements of the Legal member of Council should be taken to represent his own views, and in no way to commit the Government of India.*

This remarkable incident discloses a marked divergence of view amongst the official members of the Legislative Council; but it also discloses the important fact that some of the official members of that Council object to being made the instrument for giving the force of law to measures which are repugnant to their judgment and their conscience. That similar incidents have not hitherto been more frequent may perhaps be ascribed to the Indian Secretary of State's despatch of the 24th November, 1870, in which the Cabinet Minister asserts his power to require the Governor-General to introduce a measure, and to require all the members of his Government to vote for it.

A well-founded impression prevails that Parliament intended the Legislative Council of India to be a Deliberative body; but the above-mentioned despatch has converted it into a mere Administrative Office, charged with giving the form and authority of law to the determinations of a Cabinet Minister. Deliberation, at all events, has been

* My authority is the *Pioneer*, for 7th January, 1894. The official report of the debate will probably come by the next mail from India. [See *Postscript*.]

excluded from the Council, and the Indian Legislature has become in practice a pure delusion. The Council Amendment Act of Lord Cross might have corrected the fault had the Representative principle been incorporated in it to a reasonable extent; but in its actual form, with the evident determination of the Government to continue using the Indian Legislature as an auxiliary in the promotion of the interests of the British Cabinet, under the name of Imperial interests, the evil must endure until the injustice and suffering which it inflicts on the Indian populations become unendurable.

I am, Sir, your obedient servant,

1st February, 1894. J. DACOSTA.

Postscript, 5th February.—The Indian mail has just brought the official report, printed in the *Gazette of India* (Calcutta), for 13th January, 1894, Pt. VI., of the speech delivered on the 4th January by the member in charge of the "Presidency Small Cause Court Act Amendment Bill." It seems evident that the object of this measure, as framed by the Executive, is to divert suits from the High Court to a Small Cause Court, in which the Judges are to be, not trained lawyers, but Government servants, who may, without possessing any real professional qualification whatever, have attained the technical position of having been called to the Bar. Moreover, Section 8, after providing for the status of the Chief Judge, runs thus:—"The other Judges shall have rank and precedence as the Local Government may from time to time direct." On this point the member in charge (Hon. Sir Alexander Miller, Q.C. observed:—"Now, there is not, so far as I know and believe, any Court in the civilised world—there is certainly not any British Court—in which the Judges other than the Chief Justice or the Chief Judge, have any difference in rank or precedence other than that which follows from the dates of their appointments; and to place it in the hands of the Executive Government of any country to alter the

precedence of the Judges, would be to do the very thing which the English Constitution has been labouring to avoid ever since the Revolution, that is, to keep the Judges dependent on the favour of the Executive."

J. D.

[*** The speech of Hon. Sir Alexander Miller, to which our correspondent justly draws attention in his *Postscript*, contains, it appears to us, strong internal evidence, in other passages which we have not space to reproduce, of the gravity of the questions at issue under the specious name of the "Presidency Small Cause Court Act Amendment Bill," and also that Sir Alexander is fully awake to the fact of their gravity. We are glad to find that where the Judges of the High Court, Calcutta, have spoken on the subject, to the effect that "whenever a professional man can be obtained it is desirable that he should be obtained" for the office of Judge, Sir Alexander is on their side, and also that he would rather his present Bill "were abandoned altogether than allowed to pass leaving, as things stand at present, Judges who might be appointed having no professional qualification whatever." We are also glad to find Sir Alexander's feelings thoroughly in accordance with our own on the point that the Judges of the High Court would be the best body to frame Rules of Procedure for the new Presidency Small Cause Court, and that it is not a proper course to pursue to leave these rules to be framed by the Judges of the new Court, who are Government servants, with the consent of the Local Government. This would practically amount to the Executive taking the place of the Judicature, and the whole tenor of the establishment of the Small Cause Courts would appear to be the aggravation of the evil, admitted in Parliament even by its apologists on financial grounds, of the Fusion of the Executive and Judicial Powers, and would constitute a new attack on Judicial Independence in India. *Quod omen avertat Deus!*—ED.]

BRITISH FINANCIAL ADMINISTRATION IN INDIA: THE CAUSE AND PROBABLE RESULTS OF OUR DIFFICULTIES.

(*Reprinted from* THE LAW MAGAZINE AND REVIEW, No. CCXCII., *May*, 1894).

I.—THE FINANCIAL ADMINISTRATION SINCE 1860.

WHEN a State enjoying a long period of peace begins to borrow money for discharging interest on previous loans, the action is generally interpreted as a premonitory sign of financial decadence, seeing that it reveals the inability of the Government to obtain the requisite funds from the ordinary sources of revenue, and leads to the conclusion that the financial reserves of that State are exhausted, save its power to borrow. That India has for some years past stood in this predicament there seems little reason to doubt when a review is taken of her financial administration during the last thirty-four years—that is, since her Government and her Legislature have been under the undivided control of a member of the British Cabinet. From such a review it will be seen that, shortly after the inauguration of the present *régime*, "an accumulated deficit of six millions occurred in three years; the permanent debt during the same period was increased by six and a-half millions; the serious and unprecedented course of increasing the burdens of the people in the middle of the year, had to be taken; the public works were in a great measure suspended; the income tax and the salt tax were increased; the period was one of great trouble to the Empire and of anxiety to the Government" (Lord Mayo's *Budget Speech*, March, 1870). A few months later, and shortly before that much respected nobleman fell by the hand of a political assassin, he stated

in a despatch to the Home Government:—"A feeling of discontent and dissatisfaction exists among every class on account of the increase of taxation that has for some years been going on; and the continuance of that feeling is a political danger the magnitude of which can hardly be over-estimated."

Lord Mayo was certainly no alarmist; his representations, therefore, led at once to the appointment of a Select Committee of the House of Commons to inquire into the finances of India; and although the proceedings of that Committee were unduly protracted by the unwillingness of the Government to furnish the necessary accounts and information, and were eventually interrupted by a dissolution of Parliament, a mass of valuable evidence was collected, disclosing a laxity in the administration and a reckless waste of public money, which would scarcely have been credible without such authentic and irrefragable evidence, and which certainly would not have been possible, but for the irresponsible system of government imposed on India. Millions and millions had, within a few years, been spent in ill-conceived and ill-constructed public works—the Godavery navigation scheme, the Orissa project, the Mutlah railway, the Madras Irrigation works, and numerous other unsound enterprises—with the result that the interest on the millions borrowed for the purpose became a permanent burden on the people of India, without any countervailing advantage whatever accruing to the country. The following short extract from the evidence given before the Indian Finance Committee by the officer specially deputed by the Government to defend its action in the Department of Public Works, will give an idea of the way in which public money was expended:—

"June, 1872. Question 6535.—You said that the Public Works Department had not a concrete existence. Is it an abstraction that can get money? Answer: I meant that

they had not a concrete existence in the sense of controlling the expenditure.

"6536.—Then who controls it? The Government as a whole controls it. There is no person specially responsible to the public and to the Government for the operations of that Department.

"6537.—Now, we get it clear: this enormous expenditure is going on; it has gone on; it is going on this year to the extent of something like £40,000,000. You have recommended an expenditure of £70,000,000 in future public works, forty millions in canals, and thirty millions in railways, and yet you admit that there is no one in the slightest degree responsible for the manner in which that expenditure is carried out, no one on whom a Committee, for instance, could fasten the responsibility? I entirely admit that, as regards the general control of those great financial operations, there is no person who has that responsibility put on him, that should be."

From the whole of the evidence given before the Indian Finance Committee, it was clearly seen that bankruptcy could be averted only by a complete reform in the financial administration, and the exercise of strict economy in the future; and this task was taken up with admirable zeal and ability by the Viceroy who succeeded Lord Mayo. But as soon as confidence began to be restored, new speculative schemes, involving very heavy expenditure, were started by the Indian Secretary of State, and, from 1876 to 1880, India paid her way by extensive borrowings. In 1885, while no danger of war threatened the country, the expenditure was suddenly increased again by upwards of three millions, chiefly in connection with the Army, and the increase became larger and larger in subsequent years, the operations requiring the money being the annexation of Upper Burmah and the subjugation of the Tribal territories lying along the North-Western frontier of India.

Burmah, it was confidently asserted by the Government, could be conquered in a few months, and would, when annexed to our Indian Empire, soon add materially to its financial resources. As a matter of fact, nearly twenty millions have been taken from the Indian treasury to enable us partially to hold our conquest in Burmah; and the pacification of the country seems more remote now than it appeared to Lord Dufferin when he left India.

Then, as regards the conquest of the mountainous regions which divide our Indian territories from the advanced position taken up by Russia, it has been alleged that the subjugation of the intervening tribes is absolutely necessary for the protection of our Empire against a Russian attack. The Foreign Office, it has been hinted, possesses alarming information on Russian schemes for the invasion of India; and the Will of Peter the Great is referred to in justification of the alarm. The Will, it is true, says:—"Hasten "the decline of Persia, penetrate to the Persian Gulf and "make your way to the Indies—they are the Emporium "of the world." But the Will required the previous subjugation of Continental Europe, and gave as a reason for considering the plan practicable, that "the European "nations had mostly reached a state of old age bordering "upon imbecility, or were rapidly approaching it, and that "they would then be easily conquered by a people strong "in youth and vigour. Approach Constantinople. He "who shall reign there will be the sovereign of the world."

Now, the fact is that the European nations, far from having fallen into the anticipated state of senility and decay, are full of vigour and enterprise, while Russia, during the last hundred and fifty years, has not been able to take the first step in her projected march of conquest, which was to lead to the Indies. It seems, therefore, unaccountable that the rulers of a great and powerful nation like England should be led, by the fear of a Russian advance through

the most difficult country in the world, to embark on an arduous and problematic task, at a great risk of failure, and with the certainty of creating serious discontent, if not actual disaffection, among the two hundred millions of her Indian subjects who are being compelled, by oppressive taxation, to defray the cost of these doubtful and unsuccessful ventures. The astonishment becomes still greater, when it is remembered that our most eminent military authorities have all along declared that a Russian attack from Central Asia could most effectually be defeated upon the Indian frontier within reach of our reserves and material resources, and that it would be excessively unwise to advance and encounter the foe in the intermediate difficult and inhospitable region. Lord Roberts, at the termination of the last Afghan war, expressed himself thus on the subject:—"Should Russia in future years attempt to "conquer Afghanistan or invade India through it, we should "have a better chance of attaching the Afghans to our "interests, if we avoid all interference with them in the "meantime. The longer and more difficult the line of "communication is, the more numerous and greater the "obstacles which Russia would have to overcome; and so "far from shortening a mile of the road, I would let the "web of difficulties extend to the very mouth of the Khyber." This opinion, thus clearly defined, has since been neither retracted nor in any way qualified. Besides, the failure, during the last eighteen years, of all our attempts to subjugate even the border tribes of Afghanistan, ought long since to have convinced us that the task was impracticable, and that the money we spent, year after year, in its prosecution, only aggravated the financial burden which our previous failures inflicted on the people of India.

An idea has prevailed with the Government that bribes would effect what our arms failed to accomplish, and money

has accordingly been lavished on tribal Chiefs on condition of their acknowledging our supremacy. Such acknowledgments have been purchased from a number of Sirdars; but their tribesmen, disregarding the bargain, have all along resented our presence by attacking our convoys and detached parties, and burning our military posts, especially in the Zhob valley and in Waziristan, where we have for some years been planning the construction of a railway to Pishin, in order to secure our communications with Quetta, the line through Sind being frequently interrupted by floods and landslips. The recent Mission to Kabul and the large increase made in our subsidy to the Amir, were said to have induced him effectually to discourage the hostile behaviour of the Waziris, and to have thereby secured the safety of our military road through the Gomul pass. This expectation, however, has been frustrated, as will be seen from the following statement published in the *Pioneer* of the 25th February last:—"The Waziris are "bent on mischief. In addition to attacking a patrol in "the Bitani country, they have given trouble at the "Western entrance of the Gomul pass. Captain Rattray, "of the 22nd Punjab Infantry, was proceeding to Tank "when the guard in charge of his baggage was attacked "eight miles east of Kajuri Kach. A Lance Naïb and "three sepoys were killed, and their rifles carried off."

A similar state of things prevails in the lower part of the Kuram valley where we are also endeavouring to exercise authority and to establish a military post near Malana. Some Turi headmen have consented to receive British pay and to induce a few hundred of their followers to enlist in a sort of militia corps. The Afghan tribes of the country, however, repudiate our pretensions, and have taken up arms in defence of their independence. Sarwar Khan, their leader, had in March last an interview with the Lieutenant-Governor of the Punjab, the particulars of

which have not been made known; but the statement published in the *Englishman*, of the 28th March, that "Since our agreement with the Amir he will doubtless receive no encouragement from Kabul," would shew that the Chieftain and his followers remain hostile to our presence in the tribal territory.

These events are significant in their bearing on the finances of India; they shew that the long series of trans-frontier expeditions, which caused so heavy a drain on the Indian Exchequer, must now be renewed, if the Waziris and other tribes, whom we have, for eighteen years, been endeavouring to subjugate, are to be brought under British control.

A review of the financial administration of India since 1860, shews:—

1st. That, within a few years, a severe crisis occurred, which was due, according to the evidence collected by the Indian Finance Committee, to great extravagance on the part of the Government, and to the neglect of all sound principles of State economy;

2nd. That in 1876, when the depreciation of the metal in which the Indian revenue is collected, became alarmingly threatening for the future, preparations were, nevertheless, commenced the same year for an unprovoked war, with the avowed object of acquiring a "Scientific British Frontier," in the heart of Afghanistan; and

3rd. That the heavy expenditure subsequently incurred in unprovoked military operations beyond the frontiers of India, has so deranged the finances of that country that loans have now to be raised for paying the interest of the Public Debt.

II.—The Proximate Causes of the Present Situation.

It is in the inordinate expenditure on military schemes, entered upon since 1876, that our present difficulties have

originated; and until such expenditure is effectually arrested, and the finances of India are administered upon rational and acknowledged principles of economy, the task of replenishing the Indian Treasury must continue to be as hopeless a task as that of filling a bottomless cask with water.

The Government contend that the depreciation of silver is the only cause of their present difficulties; but this contention is inadmissible so long as the extravagance and neglect of principles, which brought on the crises of 1870, 1878, 1882, and 1888, are the leading features of their administration. Besides, Government have not been the only sufferers in the silver question; all who derive their incomes from Rupee Paper, from Indian salaries, or from industries or professions exercised in India, and have to use their incomes partly in Europe, are sufferers from the same cause; and if these persons have avoided bankruptcy, it is because they took timely precaution against the peril, by reducing their expenditure and submitting to retrenchment and economy, which doubtless pressed heavily, and even cruelly, upon individuals and families, but which common prudence and honesty inexorably enjoined.

The depreciation of silver, like the depreciation of other property caused by an excessive supply, creates a situation which is regulated by a natural law governing rulers and subjects alike; and the history of our own times has repeatedly shewn how vain it is for an extravagant Government to seek shelter from financial disaster in oppressive taxation and loans. Eighteen years ago, the Indian Finance Minister warned the Government, in the following impressive terms, of the urgent necessity of preparing to meet the difficulties which have now assumed such alarming proportions:—"From whatever point of view the "depreciation of silver is considered, it is the gravest "danger that has threatened the finances of India. War

"and famine have often inflicted losses, but such calamities "pass away. The losses are known and limited. This is "not the case with the present cause of anxiety. Its "immediate effects are serious enough; but that which "adds significance to it is that the end cannot be seen, and "the future is involved in uncertainty." (*Budget Statement*, 1876.) Not only was this warning of the need for reform and economy contemptuously cast aside by the Government, but the stupendous project of conquering Afghanistan was launched the very same year, a project which, had it been realised, would have intensified and perpetuated our financial difficulties, but which eventually resulted in most humiliating national disasters and an addition of twenty-five millions sterling to the public debt of India.

Notwithstanding this deplorable result, the fatal policy of advancing into Afghanistan was revived on the 6th August, 1885, when the Indian Secretary of State declared in Parliament that heavy additional expenditure was considered necessary in consequence of the advance of Russian troops in Central Asia. The Army expenditure during the previous four years had averaged Rs. 163,500,000; it was increased by Rs. 30,497,000 the next year, and has since been growing steadily, the sum spent in 1892-3 (the latest year for which the accounts have been published) being Rs. 230,007,791, including Rs. 4,530,000 spent on "Special Defence Works."

During our continuous financial difficulties in India, no earnest proposal has been suggested either in Parliament or by any Minister of the Crown, for comprehensive reform or the creation of some Constitutional control over the finances of that country. And yet, it is obviously through such measures alone that financial security can be obtained and due protection be afforded to the millions of Englishmen and Englishwomen, at home and abroad, who derive their means of subsistence from Indian trade and industry, from

Indian Securities and from salaried employment in India. This supine indifference both to English interests when unconnected with party politics, and to the solvency of the Indian Exchequer, is traceable directly to the vicious system of government imposed on India. When that system was being discussed in Parliament in 1858, the late Mr. John Stuart Mill emphatically warned us that an incalculable injury would be inflicted on India, unless an influence were brought into existence, which would constitute for the finances of that country a protection similar to that which it had derived from the East India Company; and the evidence given before the Indian Finance Committee soon shewed how prophetic that warning had been. Lord Lawrence, in his evidence before the Committee, said: "The Secretary "of State is supreme in all financial questions; he is "a member of the Cabinet whose fortunes are scarcely "affected by any consideration likely to promote the "interests of India, but whose existence may at any "moment be terminated by a hostile vote of the commer- "cial interest." Subsequently a member of the Committee (Prof. Fawcett) observed in Parliament, 6th August, 1872:— "The Secretary of State for India is simply a member of "the Cabinet, and what chance is there of the affairs of "India receiving adequate consideration, when the Cabinet "is perplexed by a host of questions which may affect the "fate of an administration? India may be neglected, her "money may be wasted, her affairs may be mismanaged, it "will not affect the interests of the party, it will scarcely "raise a ripple on the surface of politics."

The accuracy of these statements, which has never been questioned, is now strikingly confirmed, by the exemption just granted to Lancashire cotton goods, from the duty which is levied on all other goods on their entrance into India. This exemption, which necessitates additional taxation and loans to the extent of about Rs.15,000,000, is

virtually a grant made from the revenues of India to the manufacturing classes in Lancashire, for the purpose of securing the votes of their representatives in Parliament—it might even not inaptly be charged as a misappropriation of public money. The Tariff Bill, involving the exemption, was passed by the standing official majority of the Indian Legislative Council on the 10th March last; and the following extracts from the speeches delivered by official members on that occasion, will shew how that Council, which was intended by Parliament to be a deliberative body charged with protecting the interests of India, has been converted by the Secretary of State, by his despatch of 24th November, 1870, into a mere office for giving the form of law to his autocratic determinations. Hon. Sir Charles Pritchard said:—"My own views regarding the exclusion "of cotton goods from taxation under the Indian Tariff "Bill, are closely allied to those of the hon. member who has "moved the amendment. But I sit in this Council not as "an independent member, but in virtue of the office I hold "as a member of the Executive Council of the Governor-"General. The Government of India is subject to the control "of the Home Government. Her Majesty's Government "has decided against the inclusion of cotton goods in the "schedules of the Indian Tariff Bill. I must accept that "decision and take my part in giving effect to it; I shall "accordingly vote against the amendment." Lieut.-General Brackenbury said:—"I am personally of opinion "that, in the present situation, it is desirable in the interests "of India, that import duties should be imposed upon "certain classes of cotton goods; but I intend to vote "against the amendment, as I cannot think that, as a "member of the Executive Council, I should be justified "in voting against the orders of her Majesty's Government."

The authority assumed by the Secretary of State to direct that the members of the Legislative Council in

India should vote, not according to their conscience and convictions, but in obedience to his orders, is, I submit, both illegal and contrary to public morality. It may be remembered that in 1862, although oppressive taxation had been imposed in India in consequence of the expenditure and loss of revenue occasioned by the mutinies and rebellion of 1857-8, it was proposed to grant a large sum of money to Ghulam Mahomed, the son of Tipoo Sahib of Sringapatam. The grant had been sanctioned by the Secretary of State under certain influences which were then prevailing at home. Sir Barnes Peacock, Chief Justice of Bengal, who was one of the additional members of the Legislative Council, having inquired on what grounds the grant was to be made, the Government members objected to the full particulars of the case being submitted for the consideration of the Council, and proposed that the matter should be referred to the Secretary of State for decision. Thereupon Sir Barnes Peacock observed that the Secretary of State had no *locus standi* in that Council, which was constituted by an Act of Parliament, and that its members had a right and were bound to look into the expenditure of money raised under their sanction.

The Secretary of State then suddenly became of opinion that it was inexpedient that a Judge of the High Court should sit in that Council; and the motion for the grant in question was accordingly adjourned until the period of Sir Barnes Peacock's membership had expired. The other official members of the Legislative Council, who were salaried servants of the Government, were made to understand the necessity of obeying its orders, irrespective of their legality and justice, and the standing majority of the Council is still composed of official members.

The speeches just cited from the records of the Council of the Viceroy, clearly lift the veil which ordinarily conceals from public view the internal machinery of the great and

costly edifice by which India is governed. Outwardly, the edifice is most imposing—a Governor-General receiving the highest salary known in the British Empire, Governors, Lieutenant-Governors, and Chief Commissioners proportionately remunerated, Executive and Legislative Councils apparently in deep deliberation over the actions and laws best suited to promote the welfare of the country; but the drawing aside of the curtain exposes the meagreness and rough structure of the internal mechanism. The imposing personages viewed by the public are moved in their respective circles, not by the dictates of their reason and experience, but by electric wires worked from Downing Street by an individual to whose sole discretion the happiness of the Indian people and the expenditure of the revenue exacted from them, have been intrusted. This individual, who is selected, for no special qualification for the great trust reposed in him, but solely for the influence he exercises in party politics, is constrained, moreover, by irresistible surroundings, to satisfy in the first place the requirements of the Cabinet on which his official existence depends, and the claims of the British constituencies which support that Cabinet.

The present exemption of Lancashire cottons from import duty is only one instance of an evil which spreads in various directions. The valuable Indian patronage enjoyed by the British Cabinet enables it to reward its supporters in Parliament; and any reform which requires a diminution of that patronage is necessarily distasteful to the Government. Accordingly, for four-and-twenty years the highest military authorities have declared that the maintenance of three armies and three Commanders-in-Chief, while it entails much useless expenditure, is positively injurious to the efficiency of our military force in India; and a question was simultaneously raised—if the Punjab, the North-Western Provinces, and Oude can be administered

by Lieutenant-Governors and Commissioners, why should a more costly system be kept up in Bombay and Madras? Both the suggested reforms involved questions of patronage, and were persistently ignored by the Government for twenty years; the former has now been taken up, but the latter remains shelved.

In view of the supineness of the Government in the matter of reform, the member of the Indian Finance Committee, from whose speech a passage has already been quoted, said on the same occasion:—"But how are we to "ensure that the finances of India will be managed in the "future with greater care and economy?" The question was answered by himself in the following words:—"Every "effort should be made to interest the English public in the "affairs of India. I believe that the high price of Indian "Securities is due to the fact that investors believe that "England, if anything went wrong with the revenues of "India, would be, if not legally, at least morally responsible "for the money that had been lent on the security of the "Indian revenue. Investors may have been deluded into that "belief by an Act which this House unfortunately passed "some years since, which allows trust money to be invested "in Indian Securities. The investors are so numerous and "so widely scattered, that if their interest in India were "awakened by pecuniary considerations, this House would "soon reflect the feeling, and the Government would then "know that they could no longer remain passive spectators "of acts of extravagance and mis-management, like those "which have been described. An attempt has in vain been "made to get the Financial Department to publish a clear "account of the loans that were raised and how they were "expended."

It might also be useful to remind investors of the following significant remarks which fell from the late Earl of Derby, in the House of Lords, on 3rd March, 1881, when

it was suggested that the British Exchequer might, in case of need, come to the assistance of India for bearing the expense of Lord Beaconsfield's "Scientific Frontier" policy:—"It will be time enough to discuss that hypothesis "when it is shewn that English constituencies, chiefly "composed of working men and poor men, are willing to "increase their burden for any such purposes. I do not "believe that they would agree to it."

III.—Some Prominent Features of the Actual Situation.

While endeavouring to tide over their financial difficulties by taxation and loans, the Government have ventured on certain empirical remedies for counteracting the depreciation of silver, in its adverse effect on the sale of their Indian Treasury drafts. The Indian mints have been closed and a duty has been imposed on silver imported into India, in the expectation that these measures, which tend to reduce the supply and raise the value of silver in India, will produce a corresponding rise in the price of drafts payable in that country. It should be remembered, however, that the price of such drafts has hitherto been regulated, not by the value of silver in India, but by its price in London, and that the same condition must continue mainly to prevail, so long as the aim and the basis of the bargain in question remain unchanged. The aim of the Government in offering their drafts for sale, is to bring home that large portion of the Indian revenue which is annually spent in England. In earlier times the conveyance was effected by the Rupees themselves, or their equivalent in bullion or merchandise, being shipped for sale in London; and later, when the Government were precluded from trading, bullion was still available for the desired remittance. Simultaneously with these requirements of the Government, merchants wanted

funds sent to India for the purchase of Indian produce; and while a part of these wants was supplied by shipments of European goods to India, bullion was available for the remainder. Under these circumstances it suited both the Government and the merchants, that the Rupees, which the former desired to bring home, should be made over to the merchants on their paying the equivalent in Pounds Sterling to the Government in London. This transaction has, for years, been carried out by means of drafts on the Indian Treasuries, which the Government sold at such rates of exchange as gave them an amount in Pounds Sterling at least equal to the sum which the Rupees, if brought over and sold in London, were likely to produce. On the other hand, the merchants and all who desired to send funds to India, were willing to buy the Treasury drafts so long as they were obtainable at rates which would lay down fully as many Rupees in India as a shipment of silver purchased in London was likely to realise in that country—both parties taking into account the delay and expense attending bullion shipments. Thus it has been the price of silver in London, and not its value in India, that has ruled the rate of exchange in the sale and purchase of drafts payable in India.

The additional charge which the duty now imposes on silver shipments to India may induce remitters to pay a somewhat higher rate of exchange for drafts, but it must also, by restricting the export trade of that country, decrease the demands for drafts, and thereby affect the rate of exchange in the contrary direction.

Meanwhile, the experimental measures adopted cannot fail to cause incalculable mischief: 1stly, by obstructing an important outlet of the silver markets in Europe and America, and thereby tending to depress the price of silver in London; 2ndly, by curtailing the facilities for sending funds to India, and thereby hampering her Export trade on

which her agriculture and the collection of the Land Revenue greatly depend; and 3rdly, by crippling, through a stoppage in the free supply of currency, her internal trade and industry which constitute important, though indirect, sources of her State revenue.

Other remedies also for the depreciation of silver have been discussed for the last twenty years. The introduction of a gold standard in the Indian currency, and the establishment of Bimetallism have been foremost among the measures advocated. The value or utility of the former must necessarily depend on the cost of carrying it into effect; and while no reliable estimate of such cost has been produced, an opinion has prevailed in well-informed quarters that the cost, under existing circumstances, would considerably exceed the advantage expected to accrue from the measure.

Then as regards Bimetallism, its advocates are numerous, and many of them influential statesmen; at the same time no practical means have been suggested, except an International Convention, for securing the primary condition of the scheme, namely, the maintenance of a fixed relative value between gold and silver. Lord Salisbury, who, as our Foreign Minister, took steps to ascertain whether such a Convention would receive, in its many details, the unanimous support needed for success, thought that the project was impracticable; and his successors in that office have not declared a contrary opinion. Under these circumstances, it is obvious that other and more immediately practicable means must be discovered if the imminent peril of bankruptcy is to be averted. The Financial Statement of the Government, however, suggests no such means.

The Indian Budget for 1894-5 shows a deficit of Rupees 29,230,000, towards which it is proposed to raise Rupees 11,400,000 by new import duties, to appropriate Rupees 10,760,000 of the Famine Relief fund, and to retrench

Rupees 4,050,000 from the contributions destined to the Provincial Governments, thus leaving Rupees 3,020,000 uncovered. This sum, added to the deficits of 1892-3 and 1893-4, amounting together to Rupees 26,260,000, constitutes an accumulated deficit of Rupees 29,280,000, which is to be provided for out of loans. During the debate on the 27th March in Calcutta, it was emphatically urged on behalf of the Government that the financial difficulties of the day were due entirely to the depreciation of silver, that is, to a cause beyond their control; and the measures proposed for dealing with those difficulties are described in the Financial Statement as "a programme of retrenchment and vigilance intended to tide over a period of transition." Now these opinions betray a deplorable misapprehension of the crisis; seeing that, if the present necessity of borrowing for ordinary expenditure is to be ascribed to the depreciation of silver, the crisis cannot fairly be described as "a period of transition," when the probabilities of the future (in view of the large quantity of silver stored in America, which may any day come on the market) point to an indefinitely prolonged period of depression in the value of that metal.

Then to say that the programme of the Government is one of retrenchment is likewise misleading. It is true that the contributions to the Provincial Governments are to be reduced by Rupees 4,050,000; but the full meaning of the operation will be understood, when it is remembered that, under the existing arrangement in India, the Provincial Governments receive from the Imperial Treasury certain allotments which are avowedly insufficient for their wants, but which they are authorised and ordered to supplement by taxation imposed within their respective territories. The so-called retrenchment of Rupees 4,050,000 therefore is in reality the imposition of Provincial and local taxes, which are not to appear in the Imperial Budget.

There is also to be a retrenchment or reduction in the allotment for public works, from Rupees 5,000,000 to Rupees 3,500,000, the works to be suspended being the Cawnpore extension of the Lower Ganges Canal, and the Lucknow-Rae-Bareli railway to Benares. Works of this nature, when interrupted in their construction, are liable in India to serious injury from floods which annually recur; and the following remarks of the late Professor Fawcett demonstrate the injury which results from such interruptions:—"It is impossible to ascertain from the "figures in the Budget to what extent a surplus is due to "the sudden cessation of expenditure in public works "which have already been commenced, and which on the "one hand cannot be abandoned without wasting the money "already expended, and cannot on the other hand be "suspended without adding greatly to their ultimate cost. "No circumstance has more powerfully promoted waste "and extravagance than the impulsiveness with which "public works have been undertaken, and the suddenness "with which their construction has been suspended." (*Indian Budget Debate*, 6th August, 1872.)

If we now turn to the subject of the Revenue, we find that a marked improvement is alleged to have taken place in the land revenue of 1893-4—a statement which, taken by itself, would indicate a prosperous state of agriculture and a healthy condition of that most important branch of State income. But a much less favourable conclusion is arrived at as soon as the modes by which the increased income was realised are inquired into. In Assam, where the assessments had just been greatly enhanced, a military force had to be employed, and people were shot down before the collections could be proceeded with. In other provinces, the attachment and sale of estates and farms were resorted to with extreme severity. In Bengal, where the land tax is generally less oppressive than in other parts of India, 17,000

estates, or shares of estates, were attached for default of revenue, and the Government purchased at their revenue sales forty-three of the estates so attached for the absurdly small sum of 54 Rupees (see *Bengal Administration Report*, 1893). In the Ryotwari districts of Madras, the collection processes were marked by still greater oppression.

While these harsh and suicidal methods of realising excessive assessments may bring some temporary relief to an exhausted Treasury, they result in the destruction of much agricultural capital and in the impoverishment of the cultivators, and cannot therefore fail to inflict very serious injury on the most important source of the Indian revenue.

Moreover, the alleged improvement in the land revenue of 1893-94 may turn out to be an error, seeing that the figures in an Indian Budget have sometimes been placed under incorrect headings, and thereby led to misleading conclusions. For instance, the Indian Finance Committee discovered, after a good deal of cross-examination, that a sum of £427,000, which appeared under the head of land revenue, was actually the accumulated proceeds of waste lands sold in previous years, and which, under the law authorising the sale, should have been employed in the reduction of the public debt. "So anxious was the Government to "manufacture a surplus that the law and every considera- "tion that should influence prudent financiers or careful "Statesmen, were cast to the winds. Many as have been "the strange disclosures made by the Indian Finance "Committee, nothing perhaps throws a more instructive "light on the way in which our Indian affairs are managed, "than the confession made by official after official of "such appropriation of capital to income."—(Professor Fawcett's Speech, *Indian Budget Debate*, 1873.)

The same mistrust of Indian Budgets has been reflected in the *Times*, a leading article in which paper (November 11th,

1872), said: — "Notwithstanding the determined and "ingenious defence made by the Department in London "whenever adverse criticism is heard in the House of "Commons, we cannot bring ourselves to feel confidence in "the Budgets of our successive Ministers at Calcutta. We "will go further and say that men not at all given to timidity "look upon the financial position of India with anxiety; and "although fully admitting the wealth of the country and its "capacity to yield large yearly sums to Government, they "believe that taxation is not only becoming inordinately "heavy, but that it is not imposed according to the wisest "methods. We are straining ourselves in a time of peace, "and no further resource has been suggested by our "Statesmen beyond a tax [the income tax] which even "when kept down to an insignificant amount, has proved a "cause of irritation and misgiving throughout the "country."

IV.—The Financial Prospect in India.

In a forecast of the proximate future, mere possibilities, such as an extraordinary increase or decrease in the world's supply of either gold or silver, must, for obvious reasons, be left out of account, and probabilities alone be considered. Famine, and wars undertaken for Territorial aggrandisement or the extension of political influence, have, during the last thirty-four years, greatly added to the annual expenditure and the permanent debt of the Indian Government, and the recurrence of similar calamities under present conditions, would most probably prove fatal to the financial integrity of the State. On the other hand, a cycle of favourable seasons and a wise and economic administration of the finances, with the maintenance of peace, might in a few years restore equilibrium between the income and the expenditure of the Indian Government. It is important, therefore, to inquire whether a change of policy so urgently

needed, may be brought about in the present critical state of things—a change from the reckless extravagance of the last thirty-four years, to a policy of prudence and economy.

Experience, in a misguided career, has sometimes, through the punishment which recoils on the guilty, induced amelioration and reform; but no such wholesome effect can be looked for in the present case, seeing that those who have mismanaged the affairs of India, have nowise, in their own persons, suffered from their misdeeds. Accordingly, no reform followed previous crises, and it would be idle to look for a contrary result from the present crisis, when the pernicious influences under which India is governed remain as powerful as they were thirty-four years ago. And yet the situation is more perilous now than it was on any of the occasions referred to. Our reserves are exhausted, and the appalling barrenness of our present resources is forcibly brought to light in the following remarks made by the Finance member of the Legislative Council on the 1st March last, when he introduced the Indian Tariff Bill:—"Six years ago in this Council, I "shewed that within about four years we had been called "to enhance our expenditure by nearly 12,000,000 Rupees "in consequence of the increase of the Army and of military "measures adopted on the North-West frontier, nearly "18,000,000 Rupees in consequence of the annexation of "Upper Burmah, and nearly 18,000,000 Rupees in conse-"quence of the increase of exchange charges. These "increases of expenditure we had met by the imposition of "Income Tax, by the absorption of the Famine grant, and "by the curtailment of the sums assigned to provincial "purposes. We found ourselves then at the end of our "existing resources. We came before the Council, therefore, "to justify an increase in the Salt duty, and to ask for "further power of taxation, namely, in respect of petroleum.

"I then laid before the Council a short review of current "finance, in which I addressed myself in part to the "question of the extent to which we had permitted increased "expenditure in matters within our control. To-day I "come before the Council with a much more serious "proposal, but based upon the same grounds."

The destitution of the Indian Exchequer is made still more apparent in the Financial Statement of the Government, where it is stated, at paragraph 50 :—"The means we "have adopted in the Budget Estimates of nearly balancing "the Revenue and Expenditure are means which will "hardly be available a second time. It is at some risk that "we suspend even for one year the provision which we "shall certainly require if a famine season comes upon us. "The 40 lakhs also which we obtain from the Provincial "Governments exhausts for the time that source of relief "from temporary difficulties."

The saddest feature in the case is that the Government, while fully conscious of the gravity of the situation, takes no step towards ensuring safety in the future; but looks to the rehabilitation of the Indian currency alone for relief, and leaves to their successors the task of providing for the difficulties which they themselves are aggravating by the neglect of economic reforms, and by additions to the public debt. They say :—"We have just entered upon the "currency crisis, upon the settlement of which depends "our future. Whether we shall be able to establish our "Rupee at what we may call a favourable figure, is a "question the solution of which must practically be left to "experiment. Time has not yet declared whether our "financial position is going to improve or going to "deteriorate. It is a serious confession to make, but it is "nevertheless true, that we can do little more than watch "in what direction the forces are working which will in the "end bring us either security or more serious troubles than

"any we have yet had to provide against." (Supplement to the Gazette of India, 24th March, 1894, p. 364.)

This lamentable supineness and the incessant efforts of the Indian Government to curtail the Jurisdiction of the High Courts because it interferes with the illegal processes by which the State income is acquired, remind us of what Louis XV. said to a confidant regarding difficulties which he decided on leaving his successor to contend with. "Those long robes," said Louis, alluding to the members of the Judiciary, "would like to tutor me. The Regent was "much to blame for giving them the right to make remon- "strances; they will end by ruining the State; they are an "assembly of Republicans. Things, however, will last as long "as I do." Similarly, the Indian Secretary of State appears, from the above extracts, to have decided on leaving his successor in office to deal with the mischief which he is himself instrumental in perpetuating.

An article in the *Law Magazine and Review* for August, 1893, has shewn how similar is the present state of things in India, to that which prevailed in France, as described by Baron Ferdinand de Rothschild in his paper in the *Nineteenth Century*, entitled "The financial causes of the French Revolution." A perusal of the article in this *Review* will greatly assist the reader in apprehending the actual position of affairs in India. One of the most wide-spread and sanguinary revolutions recorded in the annals of the world sprang from the despotism and extravagance of the rulers of France; and although its advent was clearly foreseen by bystanders, it took the Government entirely by surprise. Looking at the remarkable similarity in the premises, it would be irrational to believe that the same causes will not produce the same effects, and that no amount of oppression and injustice will rouse the Indian populations to rebellion.

J. DACOSTA.

THE STATE AND THE FINANCIAL SITUATION IN INDIA.

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THE events of the last few months have placed beyond the pale of doubt the fact that the Finances of India are not only in a thoroughly unsound and dangerous condition, but that they are on a rapid decline, and that no efforts to arrest their downward course are made by those whose duty it is to provide for the safety of the State. The semi-official papers no longer attempt to disguise the situation. Thus, the *Pioneer*, for May 24th last, said:—

"The issue of a new Sterling loan of £6,000,000 is an "indication that the financial situation has gone from bad "to worse since Mr. Westland framed his budget. In his "Statement, the Finance Minister announced that it was "not intended to make any addition to the permanent debt "of the country. Council's bills, it was hoped, would be "sold to the extent of £17,000,000 in the twelve months, "while temporary loans would be raised to the extent of "£8,300,000, out of which the Secretary of State was to "use £6,000,000 to pay off the temporary borrowings of "last year. There would have been no reason for preferring "the expedient of short dated bills to a regular loan had "there not been a hope that, within the next twelve months "or so, the situation would improve so materially that "temporary borrowings could be made good, and a regular "loan dispensed with. The step now taken shews that

"this hope has had to be abandoned. The strain of the "new six millions loan will be felt at the beginning of next "year, when provision has to be made for the payment of "the interest in Sterling with shilling rupees. In what "fathoms of financial bog we may find ourselves in twelve or "eighteen months it is literally frightful to contemplate."

Turning to this country, we find that the *Times*, on June 25th last, contains, under the heading of "Indian Affairs," the following statement, which deserves special attention:—"Discursive references to bimetallism and "pious hopes of a bimetallic concert of nations are a mere "paltering with the situation. We strongly insisted on the "evils of the absence of individual responsibility which is "an ever-present danger to Indian finance. As we pointed "out on March 5th, the essence of effective responsibility "is that advisers should stand or fall by the advice which "they give. The test of effective responsibility is their "resignation when their advice is rejected. Amid all the "bad Indian finance of the past two years, there is not a "single person to whom the test could have been applied. "The views of the Finance Minister have differed from "those of the Viceroy, and the views of both have been "disregarded by the Secretary of State. The Secretary of "State, in his turn, is responsible to his colleagues, not for "good finance, but for adjusting Indian finance to the "Parliamentary convenience of the Ministry at home."

Thus, while the *Pioneer* points to the fearful depths into which we are being drawn, the *Times* clearly shews that the Indian Secretary of State, subjected as he is to the influence of the Ministry at home, is powerless to stave off the danger, although that danger has been created by his own action, as supreme controller of Indian affairs. This startling avowal, moreover, is unaccompanied by any suggestion as to how the vessel of the State is to be saved from the wreck of bankruptcy. The man at the helm, whose

personal safety is provided for, is seen to be steering straight for rocks and shoals, and common sense bids that he should at once be removed, and the vessel be placed under the control of men personally interested in her safety; but not a voice is raised for a change so obviously and so urgently needed. The two hundred millions of British subjects whose fortunes are thus jeopardised, have no voice in the matter, while the influential minority at home, who might save the State, seem blind to the peril to which they and their Indian fellow-subjects are exposed.

The line of conduct which the Government have latterly pursued with regard to the finances of India, indicates an intention to proclaim bankruptcy, rather than submit to the hard ordeal which alone could save the credit of the State, namely, the exercise of strict retrenchment and economy, the avowal of error, and the acceptance of unpalatable reform. While it is earnestly to be hoped that no such calamitous intention is entertained, the disquieting supposition acquires considerable strength from other parts of the Article in the *Times*, where the writer, after referring to the heavy gold obligations contracted by the Indian Government, says: "How those obligations are to be "met, and how those menaces of insolvency are to be "averted, are questions which demanded an answer in the "last two Indian budgets, and they are questions to which "neither of the last two Indian budgets attempted "to reply." The Article then goes on to shew that no satisfactory reply was possible, and forcibly demonstrates this fact in its concluding paragraph. Referring to the lecture which the late Indian Finance Minister delivered in the City on the 15th June last, the writer says: "Sir David "Barbour (who has regained his right to speak his mind) "warns the British nation that the Government of India "is at present in a position of great financial difficulty. "Passing over currency devices and palliatives in regard

"to which he is more or less doubtful, he comes to "the plain and immediate duties which that position "imposes on the Indian Government. The first is to "'enforce strict economy.' This the Government of India "cannot do, so long as it is compelled to defray all sorts of "charges of supervision and control in England, which no "other Dependency or Colony of Great Britain would be "called to pay. The second duty of the Indian Government "is to 'manage its financial affairs with greater forethought "and prudence.' This it cannot effect so long as there is no "individual responsibility for their management, and the "ultimate decision in financial measures of the greatest "importance is avowedly given not in the interests of "the Indian taxpayers. Its third immediate duty, according "to Sir D. Barbour, is to 'avoid at all hazards any increase "of the home charges and of its Sterling liabilities of what-"ever kind.' This it cannot avoid so long as the current "Indian payments in England continue to be met, in whole "or in part, by fresh issues of Sterling loans."

If we assume the correctness of the statements contained in the *Times* and the *Pioneer* (neither of those papers being likely in any degree to exaggerate the shortcomings of the Government), the situation may be summarised as follows:—

The Secretary of State, who exercises supreme control over the Indian administration, has, for years, sanctioned expenditure greatly in excess of the revenue, and raised loans for meeting the deficit.

A great deal of this expenditure has been incurred, not in supplying Indian wants, but in meeting the Parliamentary convenience of the Ministry at home—that is, in assisting the British Cabinet to acquire Parliamentary votes for its support.

The Indian debt has thus been, and is still being, unfairly increased; and the Secretary of State is unable to arrest that evil course, owing to the peculiar system of

government imposed on India—a system which has destroyed individual responsibility, and made it impossible for the head of the Government to enforce strict economy, to manage financial affairs with greater forethought and prudence, and to avoid increasing the home charges and Sterling liabilities of the Indian Government.

Reform, therefore, has become urgent; every hour's delay aggravates the situation and adds to the difficulty of rescuing the finances from their perilous condition. The system of government which produced this crisis must obviously be abolished, and an influence be brought into existence (as advised by the late John Stuart Mill in 1858) that will protect the Indian revenue against illegal demands, such as those which the present system has encouraged and supported. But who is to exercise this protective influence? The duty was assigned by Act 106 of 1858 to a trusted adviser of the Queen; and the plan has proved a disastrous failure, simply because the powerful instinct of self-preservation led the Secretary of State to sacrifice Indian interests to the safety of the Cabinet on which his official existence depends. On the other hand, experience and human instinct urge that those who contribute to the revenue raised for their benefit, are best qualified to decide how its expenditure may effectually accomplish its purpose. This brings us face to face with Popular Representation—a system which has ameliorated the condition of every society where it has been introduced, but which the Anglo-Indian official has denounced as unsuitable for India.

So long as the Indian populations had faith in our promises and good intentions, it would, perhaps, have been unwise to initiate a revolutionary measure and concede rights which were not claimed; but great changes have occurred during the last thirty-four years. Our faith solemnly pledged to our Indian fellow-subjects, and our Treaties as solemnly entered into with our Indian allies,

have deliberately been violated by us.* Our Law Courts have been converted into instruments for enforcing illegal and groundless claims of the Government;† and the people are still vainly appealing to our Proclamation of 1858, when our Gracious Queen, speaking in the name of the British nation, said:—"We hold ourselves bound to the natives of our Indian territories "by the same obligations of duty which bind us to all "our other subjects, and these obligations, by the "blessing of Almighty God, we shall faithfully and "conscientiously fulfil."

In short, we no longer possess the confidence of the people, and a disposition is spreading amongst them to combine against our action and our spurious Indian legislation whenever these are considered oppressive and unjust. Western education, moreover, has made rapid progress all over India; political associations have been formed in every Province, claiming for the people the right to participate, to a reasonable extent, in the administration of their country; and Popular Representation has, for the last twelve years, been actively and widely discussed by the educated classes, as offering the only legitimate means by which the people could obtain justice. The situation, therefore, has very materially changed since 1858; and while the opinion of the Anglo-Indian official must always be an important factor in the adoption of reform, views based on a state of things which no longer exists cannot safely be accepted as a guide in the altered conditions which now prevail.

* *Law Magazine and Review*, No. CCLXXXVIII., May, 1893, p. 164, *The Bengal Tenancy Act;* also No. CCXC., November, 1893, p. 97, *Our Indian Feudatories, &c.*

† *Law Magazine and Review*, No. CCLXXXIV., May, 1892, p. 183. *The Fusion of the Executive and Judicial Powers in India;* also No. CCLXXXV., August, 1892, p. 259, *Judicial Independence in India.*

The introduction of Popular Representation into the Government of India, would need much circumspection and forethought. In other countries the system has encouraged the masses of the people to invade the legitimate rights of the industrious and the thrifty, and this has occurred especially in communities where numbers formed the main basis of the representation. The object of a Parliament being to allow the people a voice in the expenditure of the revenue paid by them, equity demands that each elector's influence should be proportioned to his contribution, and that his contribution should fairly represent his stake or interest in the country. It must have been in view of some such principle that the fiscal element was introduced in the qualification of electors; and a careful adherence to that principle might save us in India from the troubles which have arisen elsewhere from its imperfect application. The Electoral body might also with advantage be confined to the classes who are capable of understanding the aim and the benefits of Popular Representation, provision being simultaneously made for extending the franchise with the spread of education.

In devising means for saving India from the ruin with which she is now threatened, it should, at all events, be carefully borne in mind that her critical condition is the result, as the writer in the *Times* so clearly demonstrates, of her pernicious system of government, in which the exercise of power being released from its legitimate responsibility, reckless extravagance receives powerful encouragement, and economy becomes practically impossible. The system contains, in fact, a germ of destruction which no patching-up, no change of form, no partial concession to principle, can eradicate; it must be entirely abolished before India can be liberated from the incubus under which she is being crushed. It appears, however, that the Indian authorities,

in order to prolong the period of irresponsible power, are about to demand that the British Government should guarantee the debt of India, and this demand is to be accompanied with the threat that, unless it be conceded, our Indian Empire must crumble and fall into dissolution.

The *Pioneer*, for June 15th last, says:—"The most "astonishing fact about the present situation is that the "credit of the country for borrowing purposes keeps up as "it does. . . . . We are paying our way at home— "as regards, amongst other charges, the interest on money "borrowed—by borrowing more. By degrees it must "become perceptible that, no matter how exalted the "morality of the Indian Government may be, there may "come a time when the Indian Government will not be "able to act up to the principles on which till now its credit "has reposed. New difficulties will be found in placing on "such terms as we have been used to, loans that depend "for their security on the resources of the Indian "Government. Then will borrowing become possible "only with the guarantee of the British Government, and "the Government of England will have to carry on "the Indian administration or proclaim a dissolution of "the Empire."

To hear of the exalted morality and the principles of a Government who have deliberately and persistently committed the unprincipled act of appropriating and wasting the security they had pledged to their creditors, sounds strange; but criticism in the present conjuncture can be of little use; and if the attempt, foreshadowed in the above extract, to prolong irresponsible government in India, is to be frustrated, opposition must be prompt and energetic, seeing that the attempt to obtain the guarantee will probably receive the support of several influential classes, namely:—

Those who have invested their money in Indian Securities;

The political supporters of the existing Ministry, and of previous Indian Secretaries of State, who misused the power intrusted to them;

Indian officials, especially in the higher ranks, who doubtless perceive that the reduction of their salaries and the abolition of dispensable appointments has become imminent;

Lastly, all who derive profit from commercial and financial transactions with the Indian Secretary of State, either for the supply and shipment of stores or for other requirements of the Indian Government.

On the other hand, the guarantee would impose fresh liabilities on the British taxpayer; and the working classes, which form the bulk of our constituencies, would certainly not consent to bear additional taxation for the benefit of the classes just mentioned. It is to be feared, however, that the measure might be delusively represented as constituting a merely nominal risk; and that some boon or concession, simultaneously offered to the electors, might weaken their opposition to the proposal. It is important, therefore, that accurate information on the subject should be imparted to the British public as early as possible.

To India, the British guarantee, by enabling irresponsible government to be prolonged (although its pernicious character has been exposed and is now universally admitted), would prove an overwhelming misfortune. Her attenuated resources would be further reduced, and the popular discontent and irritation caused by the pressure of taxation, and by the spoliative measures directed against the landed and cultivating classes, would precipitate the fatal result of irresponsible rule—an end which is already within sight. That this statement is far from being an exaggeration will be seen by a reference to the semi-official organs, both in India and at home. The *Pioneer*, for June 21st last, in the course of an Article

upon the present situation, says, with regard to land:—"It is certain that the present state of things, which "cannot but result in a most dangerous situation, must "at any cost be remedied. A few years more will "witness the almost complete ruin of the old pro-"prietors, who will be turned into a class of discontented "paupers, who see their only hope in social confusion, "converted thus into ready victims of the wiles of the dis-"loyal agitator. Much mischief has been done in the "past, but the books of the sibyl are still for sale, and, if "we neglect the chance, we shall pay dearly later "for our neglect. It is more difficult to say what "measures should be taken to remedy the existing state of "things." Then the *Times*, for July 16th last, referring to the exemption of Manchester goods from import duty in India, says:—"It is felt that, in order to maintain that "exemption India will be forced to go on borrowing in "gold with which to pay her way. Several weeks ago we "said that it was almost impossible for England to realise "the bitterness of the Indian public feeling on this "question. Articles in the native press which, a year "ago, would have excited general indignation, are now "applauded by the British journals in India." Then, after quoting some trenchant criticism from the *Madras Times* and the *Pioneer*, the writer says:—"We confine our "quotations to passages from two of the most patriotic "British organs in India. It could serve no good purpose "to reproduce the language of indignation from the native "press."

In conclusion, I would remind the reader that the danger in which India is placed is the direct result, as the *Times* so clearly demonstrates, of the pernicious system by which India is governed—a system which has destroyed individual responsibility, and is fast leading the State to a disastrous catastrophe. It therefore behoves all who perceive the

danger to take the matter into serious consideration with the view of obtaining reforms that will remove the causes of the present troubles and place the future administration of the country on a basis of sound statesmanship, security, and justice.

J. DACOSTA.

THE HIGH COURTS AND THE COLLECTOR-MAGISTRATES IN INDIA.

(*Reprinted from* THE LAW MAGAZINE AND REVIEW, *No. CCXCIV., November*, 1894.)

TWO decisions of the High Court of Bengal have just brought to light fresh instances exposing the demoralisation that has been produced in India by the practice of vesting Revenue collectors with Judicial authority —an authority which enables them to evade punishment when they are guilty of illegal and criminal actions. The following appear, from the proceedings in Court, to have been the facts in the cases to which we refer.

Two inhabitants of Eastern Bengal, Chandr Kishore Munshi and Dinendr Nath Sanyal, had altercations regarding their respective shares in the rents of certain lands in the Serajganj subdivision of the district of Pubna. Dinendr claimed a portion of the rents which the tenants were paying to Chandr, and appears to have induced Mr. Beatson Bell, the Collector-Magistrate of the subdivision, to extort from Chandr an agreement conceding his claim. Accordingly Mr. Bell summoned Chandr to his private residence on Sunday morning, 7th June, 1891, and told him that he should not be allowed to depart until he had come to terms with Dinendr (who was present on the occasion) and had signed an agreement to that effect; adding that, in case of refusal, Chandr should at once be arrested on a charge of hiring *lathiwals* (club-men). Chandr was then detained without food, and seeing no means of escape from the persecution with which he was threatened, he intimated

in the afternoon his readiness to obey the Collector's order. *Mr. Bell then wrote out the desired agreement, which both parties signed in the presence of two police officers who were called to witness the execution of the deed.*

Some days later, Chandr, on being requested to appear before the Registrar of Deeds and acknowledge his signature to the agreement, refused to do so on the ground that the signature had been obtained by unfair means. Dinendr then appealed to various local authorities for an order to enforce Chandr's compliance, and eventually obtained a decision in his favour from the Subordinate Judge of the district. From that decision Chandr appealed to the High Court at Calcutta, whose Judgment, delivered on the 17th August last, contains the following important passages :—

"There cannot, we think, be a shade of doubt that the "defendant's signature to the agreement was obtained by "duress and intimidation. Mr. Bell's evidence is con- "clusive on the point. We are of opinion that the "defendant's signing of the agreement under the "circumstances was not an execution thereof within the "meaning of the Act; indeed it was no execution at all. "Execution must mean voluntary execution, that is the "signing of the document of the executant's free will. It "could not possibly be contended that, if Mr. Bell had "forced a pen into the defendant's hand, held it there, and "by force guided the hand to write the signature, such a "signing was an execution in law; and there is no difference "between the two cases. We think therefore that the "appeal must be allowed with costs. We cannot con- "clude this Judgment without expressing an unqualified "disapproval of the conduct of Mr. Bell in this matter."

This case fully exposes the debased condition into which the administration of Justice has been brought by our vaunted paternal Government of India. The liberty and

property of unimpeachable subjects may, it appears, at any time be attacked with impunity; and, as *in a Turkish* Pashalic, a man may rob his neighbour, *provided he secures* the Pasha's co-operation. In the present instance, the victim, after two years of harassing anxiety, was eventually rescued by the intervention of the High Court; but the bulk of the people have not the means of appealing to that independent tribunal, and the Government are meanwhile persistently labouring to curtail its jurisdiction and destroy its independence. The latter object has already so far been accomplished, that a Government servant now sits on the bench of the High Court in the N.W. Provinces, although his appointment by the Indian Executive has been pronounced, by the Chief Justice and the duly qualified Judges of that Crown Court, to be *ultra vires*, and therefore illegal. In the course of the Judgment to this effect, which was delivered in January last, the Chief Justice said: "The "object and intention of the Imperial Parliament could not "have been to place in the hands of the Governor-General "in Council a power which would enable the Executive in "India to constitute a High Court of one Barrister Judge "acting as Chief Justice, and of Acting Judges who could, "at the will of the Executive, be removed from their "appointments in the High Court, and could, in the case "of Civilian Judges, be gazetted out of the Court to "perform the duties and enjoy the emoluments of Assistant "Magistrates. Any such intention would be contrary to "the policy pursued by Parliament since the Act of Settle- "ment became law, a policy which has secured to the "subjects in England protection against the unlawful and "unauthorised acts of the Executive. Hallam, in the "*Constitutional History of England*, says:—'It had been the "'practice of the Stuarts to dismiss Judges without "'seeking any other pretence, who showed any disposition "'to thwart Government in political prosecutions. The

" 'general behaviour of the Bench had covered it with
" 'infamy. Though the real security for an honest Court
" 'of Justice must be found in their responsibility to
" 'Parliament and in public opinion, it was evident that
" 'their tenure of office must, in the first place, cease to be
" 'precarious, and their integrity rescued from the severe
" 'trial of forfeiting the emoluments upon which they
" 'subsist.' . . . . That the risk of the Executive in
" India desiring to limit the judicial powers of Courts in
" India in matters touching the Executive is not merely
" hypothetical, may be inferred from a proposal made some
" years ago, that the Courts in India should, by legal
" enactment, be prohibited from questioning the legality of
" the acts of the Governor-General in Council. That the
" risk of the Executive in India seeking to set the High
" Courts in India under its control is not illusory,
" may be inferred from the introduction of a Bill in
" Parliament, by one section of which, if it had been
" passed, an Order in Council might have been made for
" the purpose of regulating the High Courts without
" Parliament being consulted. Under another section of
" that Bill, a local authority could have been invested with
" the discretionary power specially reserved to the Chief
" Justice, to select and nominate from among the Judges
" of a High Court, such Judge or Judges as it might deem
" preferable for the hearing and determining particular
" cases in which the local authority might be interested.
" The intention of Parliament in framing the Acts under
" which the High Courts in India were constituted, must
" have been to establish judicial tribunals which command
" the respect of the people of the country, and which would
" not be liable to any possibility or suggestion of influence
" on the part of the Executive."

Let us now look into the particulars of the other case referred to at the commencement of this Article: it

occurred in a different part of the Province of Bengal; but the principal figure in it is still Mr. Beatson Bell, whose conduct as Sub-divisional officer at Serajganj seems to have given so much satisfaction to the Government that he was soon afterwards selected to officiate as Divisional officer in the important district of Khulna. In July last he sent word to the officers of a zemindar owning an estate near the village of Chaknagar, that he would arrive at that village at 10 a.m. on the 20th July, and that provisions should be ready for himself, his horse and his groom. He arrived, however, two hours earlier than the time mentioned, and, not finding a glass of milk ready for him, he entered the zemindar's *cutchery* (estate office) and called for the *naïb* or head officer. Baboo Keshab Lal Mittra, who was in the office at the time, informed him that the *naïb* had gone to Khulna, and that he, Keshab, was a *mohurrir* (writer) in the service of the zemindar. Thereupon Mr. Bell struck him sharply with his riding cane, and, on the man inquiring for what offence he had been struck, renewed the assault with great violence, causing blood to flow from the wounds he inflicted, until the man fell to the ground in a fainting fit. Fever ensued, and Keshab was laid up for a week; but as soon as he was able to travel to Khulna, he proceeded thither and laid before the Deputy Magistrate a charge of assault and criminal trespass against Mr. Bell. The Deputy Magistrate, afraid of becoming instrumental in the prosecution of his superior officer, dismissed the case, in the complainant's absence, as trivial and improbable, refusing, at the same time, to furnish a copy of the proceedings; and the next day he issued a rule, calling on the complainant to show cause why he should not be prosecuted for bringing a false accusation against Mr. Bell. Thereupon, Keshab waited on the Sessions Judge of Khulna for an order to compel the Deputy Magistrate to furnish a copy of the proceedings by which

the plaint against Mr. Bell had been dismissed. Now as an appeal lies from the decisions of the Sessions Judge to the High Court, Mr. Bell, in his anxiety to keep the case out of the latter Court, then openly moved in the matter for the first time, and wrote to the Sessions Judge as follows:—

"Bhagirat, 31st July, 1894. My dear Pope,—I am just "informed that a zemindar's mohurrir, whom I struck the "week before last, brought yesterday a case of assault "against me before the Deputy Magistrate who wrongly "dismissed the case. If this is so, please set aside the "order under sect. 20, and order a re-trial anywhere you "want. I quite admit striking the man: I was in the "middle of a 40-mile ride, and had sent word to the "zemindar's cutchery to have a glass of milk for me. I "found no milk, and being very hot and thirsty, and "having a cane in my hand, I regret I lost my temper "and struck the mohurrir several times. I hear they "have petitioned the L.G. I shall tell him the real "facts as soon as he comes here to-morrow. You may "file this in the record. Please let me have an answer "to-morrow."

This endeavour to have the case disposed of through some other subordinate was, however, frustrated by the complainant's determination to move the High Court in the matter. As soon as Mr. Bell heard of this intention, he had an interview with the complainant's pleader, when the following conversation took place between them:—

Mr. Bell:—"I have already told everything to Sir Charles Elliott. He said that he will support us if you push the matter to any further length."

Pleader:—"I knew that Sir Charles Elliott would take up your cause; he is in the habit of doing so in cases like this."

Mr. Bell:—"What do you mean by moving the High Court? I have already said that I am willing to be tried by any magistrate anywhere. What can the Chief Justice

do? Can he dismiss me or do me any harm? Sir Charles does not care for the judgment of the High Court."

Pleader :—"We wish to have an authoritative judgment from the highest tribunal in this country; and then agitate the matter as far as we can, to purify the administration of criminal justice in this country. This is a typical case of the injury that is done to the people by combining the Judicial and Executive functions in one person. If Sir Charles supports you, there are higher authorities whom we must appeal to in the event of Sir Charles backing you."

Mr. Bell :—"What can you do as regards the Deputy Magistrate? He has already apologised for what he has done, and there the matter ends. Sir Charles would support him. I am also bound by honour to pay him his costs and to make up the deficit in his salary, if he is degraded. Will you consent to compromise the case as against him, if he pays some amount of compensation?"

Pleader :—"I cannot see our way to compromise the case against him."

Accordingly, on the 6th August, a petition was presented in the High Court praying that the case be removed to another district, on the ground that all the other magistrates of Khulna being subordinates of the accused, a fair and impartial trial could not be had in that district. In compliance with the petition a rule issued on Mr. Bell and the Deputy Magistrate, which soon brought matters to a conclusion. Mr. Bell came to Calcutta, and addressed a letter to the Judges of the High Court in which he said:—"I regret that I assaulted Keshub Lal Mittra as I did. I "committed the assault under the impression that I was "being grossly insulted, and possibly that impression was "wrong. If it was unfounded, I am sorry for what has "happened and I hereby apologise." The Deputy Magistrate at the same time confessed that his proceedings were wrong, and said that he had discharged the rule

calling on the complainant to shew cause why he should not be prosecuted for bringing a false accusation.

Mr. Bell's apology, extorted by a fear of the High Court, was of course no adequate redress to a man who had been wantonly insulted and subjected to great bodily suffering, and afterwards illegally and impudently thwarted in his legitimate endeavours to set himself right in the eyes of his countrymen. The prosecutor, nevertheless, was advised not to carry the matter further, as the chance of his receiving any substantial redress, in the existing condition of things in India, was very slender; and the Mymensing case (stated in the *Law Magazine and Review* for February, 1893, pp. 97, *seqq.*, Art., *A Recent Criminal Prosecution in Bengal*) was cited in support of the advice.

A most lamentable picture of our Indian tribunals is thus presented in the three cases mentioned above—a living picture of Law Courts, where Revenue collectors, untrained in Law, and other servants of the Indian Government sit as Judges and adjudicate under the immediate control of their superiors in the Executive service, violating the Law and the first principles of Justice, whenever such violation is called for in the interests of the Executive or of any member of that body. The unprincipled policy which arms the collectors of Revenue with Judicial authority is based on the assumption that arbitrary power is indispensable for the efficient raising of the Revenue, and an opinion to that effect was actually avowed in 1822, when the Governor of Madras wrote to the Home authorities that "it was "absolutely necessary for the security of the Revenue that "the jurisdiction of the Supreme Court should be more "strictly limited, and that it should be completely debarred "from all cognizance in any shape of the acts of the "Government." Fortunately, wiser counsels subsequently prevailed, and, for thirty years, the aim of the authorities in India was to affirm the supremacy of the Law as

affording the best guarantee for the peace and prosperity of the country. During that period many salutary enactments, including Macaulay's Penal Code as revised by Sir Barnes Peacock, tended rapidly to improve the administration of Justice.

Meanwhile the Government of India was transferred to a member of the British Cabinet, that is, to a Minister influenced by interests foreign, and sometimes actually hostile, to the interests of our great dependency. While the transfer was under consideration, its pernicious tendency was foreseen and denounced; but the warning was neglected, and the predicted evil began to operate very soon after the inauguration of the new *régime*. The financial resources of India were deliberately diverted from their legitimate purpose and used for the promotion of Ministerial interests, whence there arose a constant demand for additional revenue. For satisfying that demand, the Government of India revived the policy of 1822, and a very unseemly war has since been waged against the Indian High Courts, which constitute the only bulwark protecting the maintenance of Law against the encroachments of the Executive in that country. In this perilous war, the adversaries are unequally matched. The Government of India, represented by the Indian Secretary of State, being responsible only to the British Parliament, have secured the support of that paramount power by sacrificing to its members the resources which belong to India; and with their political responsibility thus neutralised, they employed the Indian Legislature in passing measures *ultra vires* for obstructing appeals to the High Courts and thereby restricting their jurisdiction. The weakened control of those Courts over the subordinate tribunals of the country has been painfully manifested in all the three cases that have been noticed. The guilty in every instance escaped punishment, whereby encouragement has been afforded to illegality and crime.

The High Courts, on the other hand, do not receive all the support which Courts of Justice generally derive from the influence of public opinion. Antagonism and distrust have been sown among the various races and sects composing Indian society, and the voice of the public has, in consequence, often been indistinctly heard.

People at home should remember that the interests—the lives, the liberty, and the property—which the Indian High Courts are called to protect, are, in a great measure, English interests; and that the British constituencies, by suffering their representatives in Parliament to allow the continuance of a state of things such as now prevails in India, are jeopardising great interests of their own. Millions of Englishmen and Englishwomen derive their subsistence from trade, industries and professions connected with or exercised in India. Has any thought been taken as to how the condition of those millions would be affected, were a sudden popular outbreak to occur, such, for instance, as the rebellion of 1857-8? And yet to believe that the rights of a hundred millions of intelligent and industrious people can long be trampled upon with impunity, is to ignore the teachings of History. It is evident from the native press that a deep and widespread feeling of discontent and irritation smoulders in the minds of the Indian populations, and that its general manifestation is restrained only by the presence of the large military force which is entertained in India, and employed chiefly in frontier expeditions. Were political complications to necessitate the removal of a portion of our Indian garrison, the circumstance would most probably, as was the case in 1857, incite to action the malcontents among our Indian subjects, as also the Indian allies and feudatories whom we have oppressed and despoiled in violation of our treaties and engagements. That British rule in India, if interrupted by any general movement of the kind, would be re-established by the forces at the command

of the United Kingdom, there is, of course, no reason to doubt. At the same time it should not be forgotten that, on the last occasion, British supremacy trembled in the scale for upwards of a year, and that unspeakable horrors marked that period of struggle. Can the risk of similar occurrences in the proximate future be contemplated with indifference, and without any endeavour being made to ward off that risk, by removing the causes which have produced it? The primary cause lies obviously in the vicious administrative combination of 1858 which placed the resources of India at the disposal of the British Cabinet for the time being, with the result that they have been wasted in unwise and disastrous enterprises, instead of being used in promoting the welfare and prosperity of the people. The Afghan war of 1878-80 cost an appalling amount of blood and treasure, and terminated in the humiliating conditions under which we had to evacuate the Amir's territories. The conquest or annexation of Upper Burma cost almost as much, in blood and treasure, as the invasion of Afghanistan had cost, and the latter task, undertaken in 1885, has yet to be completed; meanwhile the people of India are burdened with the debt contracted to defray the cost of the unsuccessful enterprise.

The cases stated in the foregoing pages are by no means isolated instances of the injustice and illegality perpetrated by Collector-Magistrates in India. Such instances are of almost daily occurrence, and the subject is being discussed by the Indian press, both Native and English, throughout the country. A practice has prevailed with the Government of India, when a private estate falls into its hands, of arbitrarily claiming a portion of the neighbouring property and of forcibly taking possession of it, without submitting the claim to a Judicial decision. It may be remembered that a judgment of the Privy Council, delivered on the 6th February, 1892, affirmed a decision of the High Court

of Bengal to the effect that certain lands in the Monghyr district, forcibly taken possession of by the Government of India as belonging to the Bhaunundpur zemindari, never formed part of that estate, which the Government had bought at a revenue sale for the absurd price of one rupee. In like manner the Collector-Magistrate of the Eastern Bengal district, of which Jamalpur is a subdivision, arbitrarily took possession of a *doba*, or lake, lying in the vicinity of an estate acquired by the Government, and the fishing in it having been leased out by the owner, he prosecuted the fishermen for theft of the fish they had taken. The prosecution failed, as the Deputy Magistrate, who heard the case, refused to convict of criminal action men who had only used a privilege legally acquired by them. The Collector-Magistrate then had the fishermen arrested again on a charge of having fouled the lake with their nets, and he had them tried by a subordinate under his immediate control, and sentenced to one month's hard labour. The ownership of the lake is still a contested matter, and the case, in its various features, presents one more instance of illegality committed for the purpose of spoliation.

Numerous other cases of the kind might be adduced here, but they would unduly lengthen the present Article, while the cases already cited, have, it may be hoped, sufficiently clearly exposed the spirit of aggression and rapacity which animates the Indian Executive towards the people placed under its protection. It must have been in regard to this state of things that Lord Lansdowne said, in India, on the 23rd January last :—" I believe the people of " this country recognise the advantages of our rule: but if " they came to associate it with inquisitorial pryings into " their private affairs, and with exaction and oppression in " one shape or another, their affection for it would be of " short duration."

That the line of conduct pursued by Collector-Magistrates has been deliberately adopted by the Government of India, there is little reason to doubt, when we see the higher authorities in India come forward on every occasion to defend and protect those officials from the consequences which should properly follow their misdeeds. The defence, however, is not based on argument or facts, but consists merely of emphatic expressions of opinion regarding the personal character of the officer found to have done wrong. Thus, the Lieutenant-Governor of Bengal, in referring to the conduct of the Collector-Magistrate who had wantonly insulted and persecuted Raja Surja Kant Acharya, of Mymensing, declared that "there was no justification "whatever for any imputation on the motives of the officer: "That His Honour has no doubt regarding the Collector-"Magistrate's good faith, integrity and honesty of purpose." The same sort of defence is now set up for the protection of the Collector-Magistrate of Cachar, who is found to have been guilty of gross irregularities in the case of a murder committed at Balladhun on the Eastern frontier. The Collector-Magistrate had refused to allow the prisoners to consult and instruct their pleaders, and he insisted on cross-examining them before the case for the prosecution had been made out; and when the witnesses for the prosecution gave their evidence, he would not allow them to be cross-examined by the pleader for the prisoners. The High Court, referring to these iniquitous proceedings, remarked, in their Judgment on appeal:—"The unfairness of such a "course is so obvious that we cannot understand how it "could be adopted or defended." The Government of India, however, rose to the occasion as regards the defence, and said:—"We admit that the Collector-Magistrate and "Sessions Judge abused the trust reposed in them; but they "acted in good faith, and thus they did nothing unworthy "and deserving of punishment. The Governor-General

" in Council has no doubt of the *bona fides* of Mr. Harold's " motives."

Now here is evidently an enigma. It is difficult to believe that the Viceroy could see good faith and nothing deserving punishment in the conduct of officers the unfairness of whose proceedings must be obvious to every Englishman; and this too, in a case where the conduct of those officials directly tended towards, and actually resulted in, the condemnation to death of innocent men, upon evidence transparently untrue.

The enigma becomes still more obscure when it is seen that almost identical expressions are used by the Indian head-officials for the defence of a guilty Collector-Magistrate; and the perplexity is not diminished when the Secretary of State is seen to accept, without comment, all those emphatic expressions of confidence, although the grounds on which they repose are never indicated. In fact, the matter tends to assume the form of a conspiracy; but what could be the object, the motive, of such a conspiracy? The only point which seems to stand out clearly in this dark matter is that the Home Authorities and those in India must have a common motive and interest in shielding the Collector-Magistrates from the natural results of their illegal, arbitrary, and often rapacious proceedings. However difficult the question thus raised may appear, its solution is urgent, seeing that it would be irrational to expect that a course of such glaring injustice and oppression on the part of the Indian Executive as has been exposed in the pages of this *Review*, can long be pursued without provoking popular outbursts and resulting in eventualities of a still more serious nature.

J. DACOSTA.

Postscript.—By the Calcutta Mail of 10th October we learn that the Deputy Magistrate who shamefully abused

his authority in order to screen the reprehensible conduct of the officiating Collector-Magistrate of Khulna, and whom Mr. Bell considered himself in honour bound to indemnify if he were degraded, has, instead of punishment, received encouragement and reward at the hands of the head-officer of the province. The *Calcutta Gazette* informs the public that the guilty officer in question has been promoted in the Government service, such promotion carrying with it an increase of pay.

The meaning of this extraordinary step cannot be misunderstood. It is a fresh blow struck by the Indian Executive in its struggle to destroy the jurisdiction of the High Courts, which were intended by Parliament to secure the due administration of Justice throughout India, and to protect the rights of her people against the encroachments of the Executive.

In the Serajganj case, the High Court pointedly directed the attention of the Government to the wrongful proceedings of the Collector-Magistrate of that subdivision. The aim of the Government, therefore, in entirely ignoring the misconduct of its officer in that instance, in following a similar course with regard to one of its servants implicated in the Khulna assault case, and rewarding the other, has unmistakeably been to lower the dignity of the High Court in the eyes of the public, and to teach the people that the Executive is above the Law, and that it is vain to seek in a High Court any redress for acts of the Government and of its officers.

Were it intended to exasperate the people and incite them to deeds which would furnish the Executive with a plea for resorting to military force, and driving the people by terrorism into a complete surrender of their rights and their property, no surer course could be adopted than that which is actually being pursued. This perilous course, moreover, can be arrested only by Parliament, seeing that

the Government of India, as represented by the Indian Secretary of State, is amenable to no other Constitutional authority. At the same time, it is evident that Parliament will not move in the matter so long as the British constituencies shew no disposition to remind their representatives that, in accepting the power of control over the Government of India, they have contracted the positive obligation of seeing that our great Dependency, on the safety and prosperity of which the welfare of the English people so largely depends, is administered with integrity and justice.

J. D.

[*Note.*—The facts of record in the cases which form the subject of the present Article seem to us amply to warrant the protest made by the author in earlier pages of this *Review*, against the Fusion of the Executive and Judicial Powers in India, and equally to justify the contention maintained throughout, that there has been for years past, and still is, in the minds of the Indian Executive, a fixed design to destroy the power and the independence of the High Courts established by the Crown. We are also forcibly impressed by the present cases, as we were by the Mymensing case, with the sad deterioration which the Indian Civil Service appears to have suffered since the substitution of the "Competition Wallah" for the old Haileybury student. The men who openly admit having entered a native landowner's office and struck one of his servants, simply because they were "hot and tired," and imagined themselves to be insulted by the absence of a glass of milk, are not the men who can safely be entrusted with Judicial power, or who should even be employed at all in the Indian Civil Service, if we really desire to rule India with integrity and justice.—ED.]

THE GOVERNMENT OF INDIA, AND ITS REFORM THROUGH PARLIAMENTARY INSTITUTIONS.

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I.

FORTY years ago, a policy of ruthless spoliation, executed in India in violation alike of treaties and engagements and of all sense of fairness and probity, resulted in the rebellion and mutinies of 1857-58, when many of our Indian provinces became the scene of anarchy, outrage and warfare, and British supremacy, to use the words of the historian, "trembled in the balance for upwards of a year." Parliament then constituted a new form of government intended to secure greater protection for life and property in India; and Her Gracious Majesty the Queen, speaking in the name of the English nation, addressed a solemn Proclamation to the Indian people, in which she said:—"We hold ourselves bound to the natives "of our Indian territories by the same obligations of duty "which bind us to all our other subjects, and those "obligations, by the blessing of Almighty God, we shall "faithfully and conscientiously fulfil." This Royal promise was hailed throughout India as the inauguration of an era of justice to all classes; and Professor Fawcett, when quoting the Proclamation in Parliament, said:—"A more solemn promise than is contained in these words was never given by a great nation. How has it been fulfilled?"

This question suggests itself with still greater force and significance at the present time, in view of the critical state of things prevailing in India; and it is proposed, in the following pages, to review the provisions which Parliament made for the better government of India, and to see how far the servants of the Crown, whose duty it has been to carry those provisions into effect, have faithfully and conscientiously redeemed the pledge given by their Sovereign.

Act 106 of 1858 provided that India was thenceforth to be governed in the name of the Queen by one of Her Majesty's Principal Secretaries of State with the aid of a Council of competent persons appointed to hold office during good behaviour; and it was specially stipulated in that Act that no appropriation of Indian revenue should be made without the concurrence of the Council, and that, except for preventing and repelling actual invasion of our Indian possessions, the revenues of India should not, without the consent of both Houses of Parliament, be applicable to defray military operations carried on beyond the Indian frontier.

Act 67 of 1861 provided that, for the better exercise of the power of making laws and regulations, the Governor-General should appoint, in addition to the ordinary and extraordinary members of his Council, a number of non-official persons who should be summoned to all the meetings held for the purpose of making laws and regulations.

Act 104 of 1861 provided that High Courts of Judicature should be established by Letters Patent under the Great Seal of the United Kingdom; that the Judges of those Courts should hold their offices during Her Majesty's pleasure; that one-third of the Judges should be barristers of not less than five years' standing; that each Court should have superintendence over all the Courts subject to its Appellate Jurisdiction, and issue rules for regulating the practice and proceedings of such subordinate Courts, with power to alter such rules from time to time.

The spirit and intention of the above-mentioned statutes are alike unmistakeable. By Act 106 of 1858, requiring the Indian Secretary of State to consult his Council and to conform to its opinion in all matters involving the expenditure of Indian revenue, Parliament manifestly intended that the Secretary of State should not act arbitrarily, or under the influence of irresponsible advisers who might be interested in a misappropriation of the revenues of India. Furthermore, the strict injunction against the application of Indian revenue to military operations beyond the Indian frontier, was most probably intended to restrain the influence of enthusiastic military advisers prone to urge foreign conquest, regardless of considerations of vital importance to the State; and it is by no means improbable that such injunction was specially intended to prevent military ventures in Afghanistan, such as had resulted so deplorably in 1838-42.

By the Indian Councils Act, 1861, Parliament clearly intended that the laws to be enacted for India should result from the free deliberations both of experienced officials and of non-official persons competent to represent the wants and feelings of the people. It is therefore contrary to the spirit and intention of that Act, that the Official members of the Indian Legislature should be, as they actually are, prohibited from recording their votes in accordance with their convictions and their conscience, and directed to record them simply in obedience to the orders of the Secretary of State. It is likewise a violation of the Indian Councils Act, 1861, that the Non-Official members of the Legislature should, whenever the Executive may desire it, be excluded from the Legislative Council, by its meeting being convened in the Himalaya mountains or in some other part of India where the Non-Official members practically cannot attend.

Lastly, by establishing High Courts in the Presidency towns, with Appellate jurisdiction and power of supervision and control over the other tribunals established

in the same Presidency, Parliament evidently intended to secure the due administration of Justice and the supremacy of the Law throughout those Presidencies. That intention, however, has been flagrantly defeated, and the spirit of the Act deliberately violated, by the Executive using the Legislature for the illegal creation of Courts vested with excessive summary powers, from the decisions of which, under the spurious legislation enacted by the Government, an appeal to the High Court, in some cases does not lie, in others is effectually obstructed. The illegal conduct of the Secretary of State has been carried still further. Government servants have, in violation of Act 104 of 1861, been appointed Judges of the High Courts, although they are, under special covenants, removable from their appointments as Judges, at the pleasure of the Government. The independence of the Crown Courts has thus been directly and flagrantly assailed by the Indian Secretary of State, and a condition of things subversive of Law and Justice is being established in India, such as existed in England before the Revolution, and from which the people of Great Britain and Ireland were relieved only by the expulsion of the Stuarts and by the Act of Settlement, which is the main support of the British Constitution.

It will thus be seen that the Queen's solemn promise of equal justice to all her subjects, and the Acts of Parliaments constituting the new *régime* for India which was inaugurated by Her Majesty's proclamation, have been deliberately disregarded and openly violated by the Crown Minister intrusted with their fulfilment. Let us now review the results of this nefarious conduct.

The Indian Exchequer is insolvent and on the brink of bankruptcy, the revenues of the country having been diverted from their legitimate purposes, and applied, in violation of the *Act for the better government of India*, to military operations beyond the Indian frontier. Oppressive taxes and illegal modes of assessment and collection have

created intense irritation, much suffering, and popular discontent throughout the length and breadth of the land. The Indian Legislature has been deprived of its Constitutional freedom of deliberation, and Bills have been enacted by the exercise of powers which Parliament never conferred on the Government of India. The Inferior tribunals of the country have been illegally withdrawn from the influence of the High Courts, and have, under the control of the Executive, been made the instruments of injustice, rapine and revenge.

That this description of the state of things prevailing in India is not open to the charge of distortion, or even of exaggeration, may be seen at once from the public prints, English and vernacular, in every province of the Indian Empire, and from the proceedings which, almost daily, disgrace the administration of Justice in the District Courts and the subordinate tribunals of the country. Instances of grave illegality and injustice, perpetrated through the instrumentality of those tribunals, have been exposed in the *Law Magazine and Review* during the last three years—instances of private property being illegally seized and appropriated by the Indian Government, as in the Kôt succession, the Sukrâj Knar, the Singampatti, the Bhaunandpur, the Jamalpore Doba, and other cases; of innocent men being sentenced to imprisonment, transportation or death, without a tittle of admissible evidence of their guilt, as in the Baladhun and Doba and numberless other cases; of highly respectable members of the community being subjected to wanton insult and injury, with no other object than to render them submissive to the illegal pretensions and demands of the Executive, as in the case of Raja Surj Kant of Mymensing, a distinguished member of Indian society and a benefactor of his country, whose public services and honourable character were proclaimed by the Government itself. This gentleman nevertheless was criminally indicted and made to stand in the felons' dock on a false charge of having neglected a

municipal duty; and he was ultimately subjected to about 100,000 Rs. of costs in order to appeal to the High Court and to prevent the full execution of the Revenue Collector's cruel project against him.

While the present Article is being written, the *Dacca Prokash* brings the report of two cases of grave misconduct on the part of Revenue Collectors vested with Judicial powers. The perversity exhibited in these instances would be incredible were it not that the conduct of Fiscal officers in every part of India is exhibiting the same disregard of both the Law and the dictates of Humanity and common fairness. Indeed, the fact that such conduct, instead of being reproved by the Government, is condoned and even encouraged, would indicate an intention to incite the people to open resistance, in order to create a plea for calling in the military and more speedily enforcing the illegal exactions of the Authorities.

Of the two cases which have suggested the above remarks, in one, the Deputy-Collector of Dacca sentenced a man to imprisonment for three months on an entirely unsubstantiated charge; and when the sentence was quashed on appeal to the High Court, the order to release the prisoner was kept back for a time as a defiance to that Court and a discouragement to similar appeals in future. In the other case, the same Revenue officer convicted a man, Thakurdas, on a false charge of theft, sentenced him to be whipped, and actually insisted on having the sentence executed, without waiting for the result of an appeal which had meanwhile been filed, and which resulted in the sentence being cancelled. The Native papers are loudly calling the attention of the community to the atrocious fact that an innocent man has been illegally subjected to a brutal and degrading ordeal, while the paternal British Government of India, who failed to protect him, withholds from him all means of obtaining redress.

Then, as regards official spoliation, among the many instances which have recently come to light, the Forest

Administration case reported in the *Pioneer* of 4th November last, is remarkable for the raid which Fiscal officers carried on in the lawless manner of soldiers raiding an enemy's country, and for the perversity of the Deputy-Collector acting as Magistrate, who alleged that it was his duty to convict certain men charged with eluding the Forest regulations of the Government, simply because the prosecution had been ordered by his superior officer, the Collector-Magistrate of the district. As the case is fully reported in the *Pioneer*, a paper well known for the correctness of the information to which it gives publicity, it may suffice here to quote the following passages from the speech of the counsel for the defence, which expose the unprincipled proceedings of those Indian Law Courts which are presided over by Revenue officers vested with Judicial power.

"I should like to get down on the record the opinion "expressed by the Court yesterday that this Court had "no concern whether the case is illegal or otherwise, "inasmuch as prosecution had been ordered by the District "Magistrate! This is very important as showing that the "Court is not sitting as a Court of Justice, but merely as a "subordinate Court bound to enforce the orders of the "District Magistrate, whether they be legal or not! This "being admitted, the frame of mind in which the Court is "trying the case, and its conception of its duties in the "matter, reduce the trial into a farce. As the District "Magistrate ordered the prosecution and is virtually the "prosecutor, the Court, on its own showing, feels bound to "convict, irrespective of the merits of the case! The "Court also disallows the evidence tending to prove that "the witness (the Deputy-Tehsildar) behaved illegally, on "the ground that the District Magistrate condoned the "illegality. I wish to point out that two wrongs do not "make a right. If the District Magistrate condoned the "illegality of the Deputy-Tehsildar, he behaved illegally "also, and that is no justification for this Court to carry "the illegality one step further still. I would impress upon

" the Court that it sits as an independent Court of Justice " to protect the people from oppression, and not to uphold " illegality simply because the District Magistrate has " condoned it. The Court is sitting as an independent " Court to see justice done, not to carry out the behests " of any official, however exalted that official's position " may be. The highest, the holiest function of this " Court—the function which casts a halo round a court " of justice and which secures for it the esteem and " veneration of mankind—is to succour the oppressed from " the powerful hand of authority wrongfully and illegally " applied, not to make that hand more powerful and direful. " This is a case which would claim the sympathies of the " judicial and the impartial mind. Here we see a " Magistrate breaking through the safeguards with which " a benevolent Government has sought to secure the " liberties of the people; illegally entering their houses, " harrying them as if they were beasts who did not possess " an immortal soul and the glorious privilege of a free " manhood; piling illegality upon illegality, setting the " orders of the Legislature and of the Government at " defiance, equally with the liberties of the people; and " then coming into this Court for sanction of his illegal and " infamous acts. I cannot believe that this Court has so " poor a conception of its high and noble duties, privileges, " and powers, as to hold that it must endorse this infamy " and illegality simply because it believes that an officer of " an exalted position has done so. There are broad rules " for the guidance of the Court, which inculcate that its " duty is the vindication of justice, not the strengthening " of the arm of power—particularly when that power is " illegally applied. I call upon the Court to act fearlessly up " to those broad rules, to enforce the ordinances of the law, " not the behests of superior authority, and to give effect " to the promise which His Excellency the Governor made " to the people the other day during his tour, when he gave " them his word as a nobleman and administrator and the

" ruler of a great dependency, that the magistrate would " protect them from any rigorous application or straining of " the Forest laws, and that if the Magistrate failed to do so, " the particular case in which such failure occurred should " be brought to his knowledge. In this case the liberty of the " subject has been violated, villages have been raided whole- " sale, houses illegally entered, the very cots (bedsteads) of " the people passed down from father to son for a generation, " seized and confiscated, and a perfect reign of terror " established throughout the district—and the heinousness " of these infamies has been aggravated by the fact that " the perpetrator is a Magistrate to whom the administra- " tion especially looks to protect the people from such " oppression and abuse of power. I call upon this Court " not to allow the guilt of these proceedings to soil its " dignity by countenancing such illegalities. These cases " have been born in illegality, nurtured in illegality, and it " is now sought to mature them in illegality by getting this " Court to accord to them its sanction and countenance."

II.

Let us now review the results of the Indian administration exposed in the preceding portion of this Article, and see what measures would best serve to arrest the decline in the finances, to raise the administration of justice from its degraded condition, and to secure the country from similar evils in future.

The situation is at once deplorable and dangerous. The finances have been declining for years, and are now in a most critical state. The depreciation which silver has undergone during the last quarter of a century has been a constant source of embarrassment and anxiety; and successive Finance ministers have warned our Government in impressive terms to prepare for a continued fall in the value of the silver rupee in its relation to the gold currency of the United Kingdom. The warning has been entirely neglected, and much of the present financial crisis is due

to that neglect; but its chief and immediate cause is the inordinate growth in the military expenditure of the Indian Government, as Sir Auckland Colvin conclusively demonstrated in the *Nineteenth Century* for October last. In whatever proportions, however, various causes may have contributed to bring about the present situation, the startling fact stares us in the face that the excess of expenditure over revenue and the raising of loans for the difference have become ordinary features in Indian Finance, and that the Indian Exchequer, under such ominous conditions, is steadily drifting towards bankruptcy. It is equally startling to observe that, in this perilous situation, no economy is proposed, no earnest and intelligent effort is made to avert the impending crisis. This indifference on the part of the Indian Government to a future both alarming and proximate, seems unaccountable except as a consequence of the vicious system of government imposed on India—a system under which the finances of the country are controlled by a Minister whose interest and responsibility in their safety are but remote and transient, being terminable any day with a change in the British Ministry; while interests of a permanent and most powerful nature—the interests of his party—impel him constantly to sacrifice the finances of India to ends which may strengthen and prolong the Cabinet of which he is a member. Under such conditions it would be unreasonable to look for any measure of substantial reform from the willing action of the Secretary of State, seeing that all such reform must necessarily strip him of the quasi-arbitrary power which he now wields. Indeed, it has long been evident that the Indian Secretary's power must be both strictly defined and kept within the defined limits before any measure of reform can have the effect which it is intended to produce.

It has often been said that the financial condition of a State faithfully represents the state of its administration. This proposition seems fully realised in India where the illegal exactions and the oppression of Fiscal officers are

systematically condoned and upheld by tribunals presided over by Government servants, and where the reign of Law and Justice has virtually ceased in every province of the Empire. Agriculture, the staple industry of the country, prospered under the laws and regulations which obtained before the inauguration of the present *régime*. The system of periodically re-assessing the land tax, which prevails over a great part of India, hinders, it is true, the development of that industry, by allowing arbitrary enhancements at each settlement—a condition which discourages the employment of capital in the improvement of the soil by exposing the fruit of such capital to be absorbed in the enhancement at the next settlement. The danger involved in this system is officially recorded in the history of the Bombay Presidency, where "the over-estimate acted upon by our early collectors "drained the country of its agricultural capital, which "accounts for the poverty and distress in which the "cultivating classes were subsequently plunged" (*Deccan Riots Commission*, C. 207, 1878, para. 33). Wiser counsels, however, prevailed later, and when the new settlements had to be made, about the year 1840, great moderation in the assessments was peremptorily enjoined in the following critical terms by Sir George Wingate, one of the most distinguished Revenue officers of the Presidency:—"No "unnecessary reduction can injure the country, and the "Government revenue can only suffer to the extent of such "reduction. An error upon one side involves the inevitable "ruin of the country; an error upon the other, some "inconsiderable sacrifice of the finance of the State; and "with such unequal stakes depending, can we hesitate as "to which should be given the preponderance?" The fruit borne by this policy of moderation is succinctly described in the following extract from the *Report* already cited:—"The country gradually recovered under "the new assessments, and the cultivation extended until "all cultivable land was brought under the plough. "Population and agricultural capital of all kinds increased

"steadily; and in 1862 began a period of extraordinary "prosperity."

This prosperous condition of the people (which a wise Government would have striven to maintain, as being the source of national wealth whence additional sources of revenue would accrue to the State) only excited the cupidity of the new Government of India, whose precarious tenure of office made it eager to grasp and use every financial advantage it could encompass, careless of a future in which it could feel no strong interest, and entirely regardless of the sacred character of its mission. Accordingly, in the new settlements made about the year 1870, the land tax was suddenly enhanced to a literally outrageous and cruel extent, the increase in many instances exceeding 100 per cent., and amounting on the whole to upwards of 60 per cent. beyond the previous demand. The injury and suffering inflicted by this policy of rapacity are but faintly depicted in the following paragraph of the *Report* already mentioned: —"The land settlements were enhanced between 1869 and "1872. From 1870 to 1874 there was a marked difficulty "in collecting the revenue, and the area of cultivation con- "tracted at the same time." Significant details, however, are found in the local reports, showing that in 1872-73 10,880 acres of cultivated land in Surat, and 25,035 acres in Guzerat, were abandoned under the pressure of the new assessments; and that in 1874 there was a marked decrease in the revenue collected in the Northern Division of the Presidency, although an increase had been made in the rates; and a Minute of the Bombay Council records that "the Government had read with much concern the opinion "expressed by the Collector of Sholapore as to the undue "pressure of the revised rates, in consequence of which a "large quantity of land had been put up for sale in default "of revenue, much of which found no purchasers." Notwithstanding these disastrous effects of the oppressive assessments, thus brought to the knowledge of the Government by its own officers, the Authorities remained obdurate,

and serious disturbances broke out in the Deccan, where a military force was employed against the people, for the collection of the enhanced tax. This calamitous course continued to be ruthlessly pursued, and evictions became so general that the quantity of arable land abandoned by the cultivators, in the surveyed districts alone, was returned at 2,238,272 acres in the Bombay *Administration Report* for 1877-78.

Meanwhile, a cultivator complained of the assessment on his field exceeding greatly the limit of one-sixth of the gross produce prescribed in a standing Regulation of the Government. The District Judge, who was a Government servant, dismissed the plaint; but the cultivator obtained a decree in his favour on appeal to the High Court; whereupon the Government introduced a Bill in the Legislative Council, removing all revenue cases from the cognizance of the Civil Courts; and the following observation of the member in charge shows the extent to which illegal exactions were being enforced. Sir Barrow Ellis said: "If every man be allowed to question in a Court of Law "the incidence of the assessment on his field, the number "of cases which might arise is likely to be overwhelming." This Bill was passed in 1875 as the *Bombay Revenue Jurisdiction Act*, and conjointly with similar enactments relating to Northern India, it has deprived millions of British subjects of their Constitutional right of appeal to British Law Courts for redress and protection against illegal and oppressive exactions of the Executive. The enactment of those measures by the Indian Government, it is submitted, was *ultra vires*, seeing that they are in direct conflict with the provisions of Act 104 of 1861 of the British Parliament, by which power has specifically been conferred on the High Courts of India to control and regulate the subordinate tribunals in the Presidencies.

The Land Tax in Bengal was fixed in perpetuity by certain Regulations enacted in 1793, with the express concurrence of the Crown and Parliament of Great Britain; and the

effect of that measure on the prosperity of the country is briefly, but fully, stated in the following extract of an official report dated the 22nd June, 1883, and published in the *Gazette of India* in the following October:—"The "Bengal of to-day offers a startling contrast to the Bengal "of 1793; the wealth and prosperity of the country have "marvellously increased—increased beyond all precedent— "under the permanent settlement. A great portion of this "increase is due to the zemindari body as a whole." These beneficial results are the natural effect of the security given to private property, and of the confidence which the people reposed in the promises and intentions of their rulers. Capital and labour were freely bestowed in reclaiming the jungle which covered the plains of Bengal; and although the tax on land amounted, in 1793, to ten-elevenths of its rental—a burden which many proprietors were unable to bear, and which caused them to lose their estates under the stringent rules adopted for the punctual payment of the revenue—agricultural prosperity and national wealth steadily increased, opening out valuable and growing sources of revenue to the State.

The prosperity, thus created under the protection of the Permanent Settlement Regulations, became an object of intense cupidity to the new rulers of India; and not only sophistry, but also official influence and pressure, were industriously employed for obtaining the co-operation of Indian officials in a repudiation of the pledges of 1793 and the appropriation of the wealth produced under their influence. A member of the Council for India, in reply to the proposal, said:—"We have no standing ground in "India except brute force, if we forfeit our character for "truth;" and a high official in Bengal resigned his appointment, rather than be a party to the violation of public faith so solemnly pledged by the nation.

In spite, however, of the many protests and remonstrances received from its own officers, as well as from the public, the Government pursued its unfair project and directed

the Indian Legislature to enact a Bill imposing a small additional burden on land in Bengal. This tentative measure having led to no popular insurrection, further steps were taken in the same direction, and later it was determined to give full effect to the intended confiscation, through a comprehensive legislative Act, abolishing all existing proprietary rights, and creating a class of middlemen charged with the payment of a scanty annuity to the actual proprietors, and empowered at the same time to rack rent the tenant farmers of the estates. The financial advantage looked for by the Government would then be able to be reaped simply by adequate taxation being imposed on the middlemen—a class who, not being a party to the Permanent Settlement, could not legally claim the exemption to which the proprietors of land in Bengal are entitled under the terms of that compact.

Great ingenuity and no small amount of astuteness characterised the course adopted in the further prosecution of the project. A Bill was at first introduced with the sole avowed object of protecting the rights of tenants and of aiding landlords in the recovery of rent; but it was soon afterwards replaced by a new Bill, on the plea that as the Rent law seemed to need amendment, it was advisable to deal with both subjects in one legislative enactment. This second Bill, at the same time, entirely omitted to provide for the avowed objects of its predecessor, and, after undergoing various alterations, was submitted for the opinions of the High Court and of a number of officials, whose duty it would be to carry out its provisions. The Bill was condemned by all those authorities as being based on a misapprehension of actual facts, as unjust to both the cultivators and proprietors of land, and as impracticable, illegal and iniquitous. Nevertheless, the Bill was passed in March, 1885, as the *Bengal Tenancy Act*, and although ten years have since elapsed, its full execution seems impracticable, and but little progress has been made in the survey, and the Record of rights which is destined to supersede

the ancient rights of the proprietors. Meanwhile, the public mind in Bengal remains much disturbed and alarmed; land is seriously depreciated, and the increasing difficulty of recovering rent adds each year to the number of estates put up for sale for default of revenue. These sales afford the Government opportunities, of which they constantly avail themselves, for acquiring valuable estates at merely nominal prices.

The following passage in the Preamble of Regulation II. of 1793, will show the direct conflict subsisting between the Regulations of that year (which are still on the statute book) and the Bengal Tenancy Act, and other Indian enactments, empowering Revenue officers to preside as judges in the Law Courts of the country.

"All questions between Government and the landholders "respecting the assessment and collection of the public "revenue, and disputed claims between the latter and their "ryots have hitherto been cognizable in the Courts of "Maal Adawlut or Revenue Courts. The collectors of "revenue preside in these Courts as judges, and an appeal "lies from their decision to the Board of Revenue, and from "the decrees of that Board to the Governor-General in "Council in the department of revenue. The proprietors "can never consider the privileges which have been conferred "upon them as secure, while the Revenue officers are vested "with those judicial powers. Exclusive of the objections "arising to these Courts, from their irregular, summary, and "often *ex parte* proceedings, and from the collectors being "obliged to suspend their judicial functions whenever they "interfere with their financial duties, it is obvious that, if the "Regulations for assessing and collecting the public "revenue are infringed, the Revenue officers themselves "must be the aggressors, and that individuals who have "been wronged by them in one capacity can never hope to "obtain redress from them in another. Their financial "occupations equally disqualify them for administering the "laws between the proprietors of land and their tenants.

"Other security, therefore, must be given to landed "property, and to the rights attached to it, before the "desired improvements in agriculture can be expected to "be effected. Government must divest itself of the power "of infringing in its executive capacity, the rights and "privileges which, as exercising the legislative authority, "it has conferred on the landholders. The Revenue officers "must be deprived of their judicial powers. All financial "claims of the public, when disputed under the Regulations, "must be subjected to the cognizance of Courts of "Judicature superintended by judges who from their official "situations and the nature of their trusts, shall not only "be wholly uninterested in the result of their decisions, but "bound to decide impartially between the public and the "proprietors of land, and also between the latter and their "tenants. The collectors of the revenue must not only be "divested of the power of deciding upon their own acts, but "rendered amenable for them to the Courts of Judicature, "and collect the public dues, subject to a personal prose- "cution for every exaction exceeding the amount which "they are authorised to demand on behalf of the public, "and for every deviation from the Regulations prescribed "for the collection of it. No power will then exist in the "country by which the rights vested in the landholders by "the Regulations can be infringed or the value of landed "property affected."

Reverting now to the question as to how India is to be extricated from her perilous situation, and secured from similar dangers in the future, the first step which her recent history suggests is that the arbitrary power, the exercise of which has disorganised her finances and debased the administration of justice, should be abolished; that the legitimate powers of the Indian Secretary of State should be strictly defined, and that the Minister himself should be made practically amenable to a Court of Justice, and be subject to a personal prosecution for every act exceeding the limit of his authority.

The second step should be to supply a want which has long been felt and is universally acknowledged—the want of a wholesome influence over the Finance. Such an influence can be advantageously exercised only by men personally and permanently interested in the safety of the finances and the welfare of the country—qualifications in which the Secretary of State is manifestly deficient, while subordinate officials would lack the power necessary for the due exercise of the needed influence. In all civilised countries, this influence is exercised, more or less directly, by the taxpayers, who are undoubtedly the body of men permanently and most deeply interested in the safety of the finances and the welfare of the country.

The system of government now followed in India, however, precludes the taxpayers from the exercise of any influence in a matter of such vital importance to them. India has no Parliamentary institution where the wants and feelings of the people can, in a Constitutional and effective manner, be made known to their rulers and legislators—a condition of things which involves serious danger to the State, as all statesmen will doubtless admit. It is true that the Non-Official members of the Indian Legislative Council are theoretically considered to discharge the duties which members of Parliament would fulfil if a Parliament existed. But their insignificant number, and the fact of their being selected by the Government, negative that theory. On the other hand, simply to increase their number, so as to allow them at all times to combine for a majority, might result in rendering the Government powerless for good, and in creating the great peril which arises when the supreme power in a State is vested in a single Popular Assembly.

In nearly every country an Upper House has been found absolutely necessary to prevent the decisions of a Parliament from being entirely the result of momentary passions and impulses, and to insure their being the conclusion arrived at after mature deliberation and calm reflection.

The task of introducing a fair Parliamentary system in India will, doubtless, be difficult. The establishment of Parliaments in our Colonies presented many difficulties, especially in the Canadian Provinces, where the population consisted of different races, each deeply attached to its traditional institutions, language, and religion. Parliamentary Government, however, rests on principles emanating from the nature of man, and applicable to the wants of communities, irrespective of climate and accidental circumstances. The Parliament of Canada, traced on these principles by Lord Durham in 1837, and subsequently brought into existence, appears to be satisfying the wants and legitimate aspirations of the people, and consolidating the British Dominion in North America. In the general absence of a local aristocracy, a Senate or Upper House had to be formed by Government nominating its members for life; and the rights and functions of the Crown were delegated to the Governor-General, who represents the Sovereign. The varied experiences acquired in our different colonies should, with the aid of trustworthy Indian officials, enable us to adapt the Parliamentary system to the wants and circumstances of India, without the risk of falling into the many errors which generally mark the execution of tentative measures.

To those who are personally acquainted with India, it will doubtless appear advisable to extend the franchise only to the classes able to understand and value the gift, and to appreciate the advantage of a Representative system of government; and if, at the same time, a method should be devised for maintaining some proportion between the power conferred on the elector and the financial burden which he has to bear, the difficulties and dangers which have arisen in other countries from a neglect of the principle involved, may perhaps be lessened, if not entirely avoided, by the application of that principle to India.

Sir Auckland Colvin, in his very instructive Article mentioned previously, lays particular stress on the fact

that "the root of our financial difficulties in India is the insufficient check exercised by the Financial Department"; and Sir David Barbour, in his remarkable speech at the International Bimetallic Conference last spring, said: "The system of government in India is favourable to increase of expenditure and unfavourable to reduction of expenditure." In short, there is a general consensus of opinion that the evil from which India is suffering, can be remedied only by a wholesome influence being created, to control the administration of her finances. Sir Auckland Colvin does not believe that "the time has come when the Indian expenditure can be controlled by an Indian Parliament"; and looks for a remedy to the Finance Minister exercising more influence in the Council of the Governor-General of India. It should, however, be remembered that the decisions of that Council are not final, but may be reversed by the Secretary of State, that is, by the very official who, disregarding the remonstrances of the Finance Minister and the Law member of the Viceroy's Council, insisted on adopting the increased scale of Military expenditure initiated in 1885, from which the existing financial difficulties of India have arisen.

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